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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Thirteenth periodic reports of States parties due in 1994

Addendum

HUNGARY*

[17 March 1995]

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* The present document contains the eleventh, twelfth and thirteenth periodic reports which were due on 5 January 1990, 1992 and 1994, respectively. For the ninth and tenth periodic reports of Hungary, and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/149/Add.9 (ninth periodic report), CERD/C/172/Add.7 (tenth periodic report) and CERD/C/SR.795 and SR.876.

The information submitted by Hungary in accordance with consolidated guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.11).

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I. GENERAL REMARKS

1. Since the consideration of the tenth report submitted by the Government of Hungary as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Hungarian society has undergone a major and fundamental change. The communist one-party regime has been replaced by a pluralist society, functioning democracy and the rule of law.

2. One of the main driving forces of the democratic transformation having taken place - all along within the framework of the law - in Hungary was the quest for the prevalence of human rights and fundamental freedoms. The legislative process, still under way on the basis of political and social changes, results in the fundamental transformation of the legal system. This re-regulation concerning all spheres of life has exerted considerable influence on the enjoyment of the rights enshrined in the International Covenants and other human rights conventions and, from the point of view of the State, on duties, too. In this respect, it is recalled that the third periodic report by the Government of the Republic of Hungary on the implementation of the International Covenant on Civil and Political Rights (CCPR/C/64/Add.7) and the reports summarizing the consideration of the report by the Human Rights Committee as background documents, beyond the scope of this report, provide detailed information about the human rights aspects of the change of system in Hungary.

3. As a result of the change of system, the Hungarian legal system has been brought into harmony with the two Covenants and the other international human rights conventions adopted within the framework of the United Nations to which Hungary is a party. Act XXXI of 1989 amending the Constitution has embodied a new chapter into the Hungarian Constitution under the title "Fundamental rights and duties". Chapter XII, taking into consideration our international obligations and in the spirit of these, has re-regulated the fundamental rights and duties in a manner and wording similar to that of the International Covenant on Civil and Political Rights. The table below contains the formulation of rights in the light of a comparison between the Constitution and the Covenant.

Right	Covenant	Hungarian Constitution
Prohibition of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other situation	Article 2	Article 70/A
Equal rights of men and women	Article 3	Article 66, paragraph (1)
Right to life	Article 6	Article 54, paragraph (1)
Prohibition of torture and inhuman treatment	Article 7	Article 54, paragraph (2)

Right	Covenant	Hungarian Constitution
Prohibition of servitude, slavery and forced labour	Article 8	(Although no constitutional provision exists in this respect, the prohibition of slavery is guaranteed by international agreements ratified by Hungary and embodied into the laws of the country)
Right to liberty and security of person	Article 9	Article 55
Right to liberty of movement and freedom to choose one's residence	Article 12	Article 58, paragraph (1)
Prohibition of unlawful expulsion of foreign citizens	Article 13	Article 57, paragraph (2)
Right to a fair trial	Article 14	Article 57, paragraph (1)
Prohibition of retroactive force of penal act	Article 15	Article 57, paragraph (4)
Right to legal capacity	Article 16	Article 56
Protection of privacy (private life, family life, home correspondence)	Article 17	Article 59
Freedom of thought, conscience and religion	Article 18	Article 60
Right to freedom of expression	Article 19	Article 61
Right of peaceful assembly	Article 21	Article 62
Right to freedom of association	Article 22	Article 63
Protection of family, right to found a family	Article 23	Article 67, paragraph (3)
Protection of children	Article 24	Article 67, paragraph (1)
Right to take part in the conduct of public affairs	Article 25	Article 70
Right to equality before the law	Article 26	Article 57, paragraph (1)
Minority rights	Article 27	Article 68

4. The Constitution guarantees human and civil rights for everyone within the territory of the Republic of Hungary without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (70/A section). The Constitution guarantees the prohibition of unlawful expulsion of foreign citizens, stating as follows:

> Article 58, paragraph (2) "An alien lawfully residing in the territory of Hungary may be expelled therefrom only in pursuance of a decision taken in accordance with the law."

5. It protects equality before the law:

> Article 57, paragraph (1) "In the Republic of Hungary, everyone shall be equal before the courts and everyone shall be entitled to a fair and public trial by an independent and impartial tribunal, established by law in the determination of any criminal charge against him or of his rights and obligations in any lawsuit."

6. In protecting minority rights the Constitution states:

> Article 68, paragraph (1) "National and ethnic minorities living in the Republic of Hungary shall share in the power of the people: they shall be constituent factors of the State."
>
> Paragraph (2) "The Republic of Hungary shall protect national and ethnic minorities. It shall ensure their collective participation in public life, foster their culture, the use of their mother tongue, school instruction conducted in their language, and the right to use their names in their own language."
>
> Paragraph (3) "The laws of the Republic of Hungary shall provide for the representation of the national and ethnic minorities living within the territory of the country."
>
> Paragraph (4) "The national and ethnic minorities shall have the right to establish local and national self-governments."

7. Furthermore, article 65 of the Constitution grants, in accordance with conditions determined by law, the right to asylum to foreign nationals and stateless persons persecuted for racial, religious, national, linguistic or political reasons in their country and place of residence, respectively. No one who has been granted asylum shall be extradited to another State.

8. In order to implement in practice the rights provided for by the Constitution, several Acts contain provisions regulating the detailed safeguarding of these rights. The report gave detailed information on amendments thereto, and other adopted pieces of legislation such as the Act on the rights of minorities.

9. In the course of the legislative and amending process the Penal Code, the Civil Code, the Code on Criminal Procedure, the Code on Civil Procedure, the Rules on the Enforcement of Punishments and the Family Law, among others, have

been amended during the reporting period. New Acts have been adopted on the Labour Code; on the Legal Status of Civil Servants and Public Officials respectively; on the Freedom of Conscience and Religion; on Plebiscite and Popular Initiative; on the Election of Members of Parliament; on the Election of Representatives of Local Self-Governments and Mayors; on Local Self-Governments; on Travel Abroad and Passports; on Emigration and Immigration, on the Entry and Staying in Hungary as well as on Immigration of Foreigners. In addition, the adoption of a new, comprehensive Act on the Rights of National and Ethnic Minorities is considered to be a progressive development.

10. The Hungarian Government considers the promotion of the national and international protection of human rights as a matter of high priority. The condemnation of racism, racial discrimination anti-Semitism and xenophobia, and national and international action against them, forms an integral part of these efforts.

11. It was after the submission of the previous report that Hungary made a declaration on 13 September 1989 concerning article 14 of the Convention, thus indicating its full commitment to observe and guarantee the provisions of the Convention, also by accepting all other forms of international legal remedy on human rights. In this statement, it recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of any of the rights set forth in the Convention in the Republic of Hungary.

12. Another significant development of the reporting period is that the Republic of Hungary with its Act LXXX of 1991 passed by the National Assembly at its session of 12 December 1991 and promulgated on 24 December 1991 has withdrawn its previous reservation made in the instrument of ratification of the Convention with respect to article 22.

II. IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION

Article 2

13. The Hungarian Government has abandoned the homogenizing minority policy of the past decades having resulted in the large-scale loss of the self-identities of minority communities. The basic principles of the new Hungarian minority policy are as follows:

(a) The active and preventive protection of minorities, the preservation of their self-identity as well as the cultural and linguistic identity of the minorities;

(b) Special preferential treatment;

(c) Cultural autonomy in the form of self-governments.

In order to realize in practice these political principles, the Government with its Decree No. 34/1990 (VIII.30) set up the Office for National and Ethnic Minorities as an independent administrative body.

14. During the reporting period the process of organization of the national and ethnic minorities in Hungary started. Within the framework of the democratic institutions in the country, the former monolithic federations of ethnic minorities have been replaced by organizations and associations that genuinely reflect the various political and cultural interests of the relevant ethnic groups. As a result of these changes some hundred gypsy organizations have been formed; the former Southern Slav Union has been replaced by independent Serb, Slovene and Croatian organizations (the latter two have established regional organizations as well). The Slovakian minority in Hungary established its own alternative organizations. The activity of the organizations protecting the interest of numerically smaller ethnic groups (Bulgarians, Armenians, Greeks, Ruthenians, Poles) has also been strengthened.

15. The most important fields of governmental initiatives and actions were as follows:

(a) Elaboration of a bill on the rights of national and ethnic minorities;

(b) The Government in its Decision No. 1012/1992 (III.11) laid down the guidelines on minority education and culture and identified the tasks of development;

(c) Despite the deteriorating economic conditions, an increased financial arrangement has been realized in enhancing the conditions for:

(i) The special support for those participating in minority education;

(ii) The financing for the activity of minority organizations from the budget;

(iii) The support for cultural and religious initiatives and those promoting civil society of the ethnic groups in Hungary;

(iv) Maintaining the continuous functioning of national and ethnic minority media.

16. A significant event of the reporting period with respect to this article is that the National Assembly passed an Act on the Rights of National and Ethnic Minorities on 7 July 1993. The adoption of this Act is of paramount importance: the Hungarian legislation - taking the particular Hungarian circumstances into due consideration - undertook and carried through the legal regulation of one of the crucial problems having a serious effect on this region of Europe.

The preparatory process

17. The Hungarian Government submitted the bill to the Parliament in early June 1992. Prior to that, several other drafts had been prepared. Deserving special mention among these drafts are those worked out by the Secretariat for National and Ethnic Minorities, the Ministry of Justice, the Round Table of

National and Ethnic Minorities in Hungary, which acts as a consultative forum of the minority organizations of the country, and also by the Office for National and Ethnic Minorities.

18. From July 1991 on, the Round Table and the Office had made efforts to harmonize their respective drafts which resulted in a joint draft in September 1991. Subsequently, in compliance with the provisions of the Law on the Process of Legislation, the draft bill was submitted to the competent administrative bodies to be examined and harmonized as well as to the Government Codification Committee to be revised from constitutional and other legal aspects.

19. In parallel with all these, political negotiations and discussions of experts were held with the minority organizations and the Round Table. It was with the intention of seeking an agreement with the minority organizations that the Government discussed readings of the drafts prepared with the assistance of the competent ministries and then to submit it as a bill to the National Assembly.

With a view to political consensus

20. The National Assembly started its general debate on the bill in September 1992. Simultaneously, the National Assembly's Committee on Human Rights, Minorities and Religious Affairs organized working groups of experts - composed of representatives of the six parliamentary parties and involving the experts of the Office for National and Ethnic Minorities and also of the Minority Round Table - to carry out preparatory work. The six-party negotiations lasted until December 1992. Following this, representatives of the six parliamentary parties, having received expert opinions and reports totalling some 1,500 pages, held a series of political debates. As a result, they arrived at a political agreement on the disputed provisions of the bill. The six-party agreement thus removed the obstacles in the way of the bill's presentation for adoption.

21. In the meantime, the Council of Europe - which had received the bill in advance for comments in the autumn of 1992 - gave a favourable opinion, remarking that the specific form of self-government as outlined by the law was a rare occurrence, even in Europe. The Council found the following to be highly progressive:

The normative definition of a national or ethnic minority;

The principle of the free choice of a national identity;

The regulation of collective rights of minorities;

Cultural autonomy based on personal principle.

Standard setting

22. Relying on the relevant international experience as well as on historical traditions, the present Act starts from the following premise: "Minorities living in the Republic of Hungary share alike in the power of the people, that

is, they are constituent factors of the State". Considering its significance, this approach forms one of the fundamental principles underlying the present law. It also stipulates that the equality of rights of national and ethnic minorities is in the interest of the whole society.

23. Act LXXVII of 1993 consists of nine chapters; a separate chapter is devoted to the following items: preamble and basic issues, individual minority rights, collective rights of minorities, self-governments of minorities, ombudsman of minorities, cultural and educational autonomy of minorities, use of minority languages, financial support of minorities; economic management and assets of minority self-governments and final provisions.

24. The objective of the Act on minorities is to identify and create conditions under which the assimilation process of national and ethnic minorities can be halted and made reversible. A special common trait of national and ethnic minorities in Hungary is that in most cases they were ethnic groups which immigrated to Hungary centuries ago and have coexisted with Hungarians ever since. In view of such adverse developments as the often forced assimilation which took place at the turn of the century and in the period between the wars, the deprivation of civil rights and the unlawful expulsion and exchange of populations, and the negative effects of the ill-conceived urbanization and educational policies carried out over the past decades, the Government was determined to take appropriate action to reverse the process of assimilation of the minorities. In addition minorities in Hungary live in a scattered settlement pattern, in practically almost every region of the country and, in most cases, mixed with the majority population.

25. Under these circumstances, the minorities' own strong intellectual strata could not take shape or develop. Therefore, one of the fundamental principles of the present law is related to the active protection of minorities, that is to help national and ethnic minorities to preserve their identity and to guarantee the free choice of their national identity.

26. The Act contains a solution elaborated jointly with the Minority Round Table: it gives a definition of the national and ethnic minority by using criteria widely known from international law. Thus, according to the legislation, all ethnic groups having been living on the territory of Hungary for at least one century are to be regarded as national and ethnic minorities who constitute a numerical minority within the population of the country, whose members hold Hungarian citizenship and who differ from the rest of the population in terms of their mother tongue, culture and traditions.

27. The Act also includes a list of national and ethnic groups living in Hungary and describes the procedure by which further ethnic groups, not included in the list, may apply to be regarded as minorities coming under the effect of the Act. In terms of the present Act, qualifying as national or ethnic groups living in Hungary are: Armenians, Bulgarians, Croats, Germans, Greeks, Gypsies, Poles, Romanians, Ruthenians, Serbs, Slovaks, Slovenes and Ukrainians.

28. The Act covers only minority individuals with Hungarian citizenship, excluding "new" minorities such as refugees, immigrants, permanent foreign

residents and stateless persons. No differentiation is made by the Act between national and ethnic minorities; they are entitled to exercise the same rights.

29. Under the law, the Gypsies are considered an ethnic minority in Hungary. This is the largest and, at the same time, socially the most disadvantageous minority group.

Minority rights

30. There is a special emphasis in the Act on the right to national or ethnic identity, on the right to preserve and maintain ties and relations with the mother countries or nations, on the right to protection against assimilation as well as on the right to establish local and national self-governments.

31. Of the minority rights, particularly important are those connected with the use of first and family names according to the grammatical rules of the mother country, learning, cultivating, enriching the language, history, culture and traditions of the given minority, participation in education and cultural activities in their mother tongue. To articulate their particular interests, minorities may also organize or establish parties, associations or other organizations in accordance with the provisions of the Constitution.

32. Belonging to minority rights are also those which are connected with creating proper conditions for full or partial instruction in their mother tongue, or with the organization of a minority's own nationwide network of educational, cultural and scientific institutions. The Act also provides for minority rights to establish and maintain wide-ranging and direct international relations.

33. The number of members of Parliament belonging to minorities is more than 20, representing different political parties. One of the most important demands of minority organizations was in the Act: namely, that national and ethnic minorities have the right to be represented in the National Assembly in a manner defined by a separate Act to be submitted to the Parliament in the near future.

Self-government, autonomy

34. In the course of preparatory works for the Act, a variety of possible forms of minority self-organization were proposed, since this is the field which serves to achieve one of the law's most important objectives: safeguarding and ensuring the interests of minorities. The question was whether these forms were to be realized on the basis of the freedom of association or be realized within self-governments. The Act takes a stand for the self-government version.

35. The Constitution refers to the local and national self-governments of minorities. Minority organizations also took a strong stand for the self-government forms. However, the powerful legal functions as demanded by them and as ensured by the Act can only be assigned to self-governments which have been adequately legitimized by elections. This can be achieved only if self-government elections are held at a fixed place and date and under

effective legal control with the participation of all the minorities having the right to vote. This does not exclude the possibility of establishing minority organizations on the basis of the freedom of association.

36. The first election where representatives of minorities were elected took place in the local (self-governments) elections in December 1994.

37. The right of minorities to participate effectively in decisions concerning their own affairs or the region in which they live is fully recognized by the law. The legal institution of minority self-governments created by direct and indirect methods, i.e. direct or indirect elections, is a new element in the Act. The Act makes it possible for every minority to organize its own national self-government by way of electors. These minority self-governments of countrywide competence are to represent and safeguard the interests of the given national or ethnic minority at the national or regional level. It is these self-governments which the Act authorizes to establish various institutions in order to help in establishing cultural autonomy of the given minority.

Rights and guarantees

38. The Act also ensures various other rights such as the right to be consulted on the affairs affecting minorities, freedom of opinion, right to take initiatives and to make proposals, right to request information, right to send delegates, right to represent interests, right to establish and maintain educational institutions (kindergartens, schools) and right to establish public cultural institutions.

39. The Act lists the languages currently used by minorities in Hungary as follows: Armenian, Bulgarian, Croatian, German, Gypsy, Greek, Polish, Romanian, Ruthenian, Serb, Slovak, Slovene and Ukrainian.

40. Deserving special mention among the detailed provisions of the Act is that children belonging to a minority may be fully or partly instructed in their mother tongue through various forms of school education. Minority education may take place in minority kindergartens, schools, classes or study groups, exceptionally in additional courses. The Act pays special attention to the necessity of minimizing the educational disadvantages of the Gypsy population and therefore stipulates obligations to create special educational conditions for upgrading the education of Gypsy children. It is also guaranteed by the Act that the teaching of the history and cultural traditions of the given minority is ensured within the existing educational institutions. To guarantee all these, concrete State responsibilities are identified: training of teachers, employment of visiting instructors, providing for the education and training of persons belonging to minorities in educational institutions abroad where the language of instruction is their mother tongue. Following the principle of cultural autonomy, the law also manifests a commitment and responsibility for the State to provide financial support to preserving and fostering the culture of minorities. The Act also provides for proper financial means to the extent of the related provisions of the current Act on Finances.

41. In the public educational field, the law empowers the national minority self-governments to encourage and conduct public educational activities especially by establishing minority libraries, publishing house, exhibition facilities, museums, cultural, art and scientific institutes. For such purposes, budgetary support may also be requested.

42. The Act declares that anyone, anywhere and at any time may freely use one's mother tongue. The law stipulates that in compliance with the requests of the minority local government working within its jurisdiction, the given settlement's local government is obliged to ensure that local regulations, announcements and other actions are made public and that plates indicating place and street names and sigh-boards of public offices or bodies are used in the minority language as well.

43. Special emphasis is laid by the Act on the financial means necessary to realize its provisions. Financial resources necessary to implement the cultural autonomy of minorities and to maintain the functioning of minority local and other self-governments are defined in terms of a multi-channel funding system. This means that the necessary funding comes partly as budgetary appropriations defined by the current Act on Finances, and partly from the National and Ethnic Minority Fund proposed to be authorized by the National Assembly to support the minorities and their activities. In addition, it is also proposed that other foundations be also established for this purpose. Thus, the necessary funding of proper management of the minority self-governments is ensured by the Act through the current State budget to give normative complementary support to the full or partial education of minorities in their mother tongue and also to the minority self-governments themselves.

44. Finally, as an amendment to the Act on the Election of Representatives of Local Governments and Mayors, the law formulates special electoral rules for minorities in order to promote their representation.

45. The Government of the Republic of Hungary, on the occasion of the parliamentary adoption of the Act on the rights of national and ethnic minorities, released the following statement:

> "The Government of the Republic of Hungary welcomes and considers an outstanding event the fact that the Parliament adopted with 96 per cent of the votes in favour, the law on the rights of national and ethnic minorities on 7 July 1993.
>
> "The Government of the Republic of Hungary in its previous statement released during the preparatory process supported the codification of the rights of national and ethnic minorities, based on European norms and standards, and enumerated those comprehensive principles which can ensure the free development of the national and ethnic minorities to the greatest possible extent.
>
> "The Government believes that it has significantly contributed to the success of the legislation that the minorities, as constituent factors of the State, took part through their representatives as equal partners in the preparatory process of the legislation. The agreement of

the political forces led to the adoption of a comprehensive piece of legislation, based on broad consent, which provides new opportunities, legal frameworks and rights to citizens and their communities belonging to the national minorities in this country.

"The self-government, the cultural autonomy, the recognition of the minority rights as group rights, and the provision of free choice of identity are pivotal elements of the law, which are unprecedented and forward-looking in international practice as well.

"The Government of the Republic of Hungary supports the improvement of the status of national and ethnic minorities by further measures. It intends to make early steps to ensure their own representation in Parliament, to establish the institution of ombudsman of national and ethnic minority rights and further develop the conditions of minority education and culture. The minority self-government structure to be introduced will contribute to an increased support and a more effective representation of particular interests both at local and national level. The cultural and educational self-government creates conditions for minorities to establish their own institutions.

"The law cannot substitute the activity of minorities though it is suitable for compensating the disadvantages stemming from being in minority, it assists the minorities to preserve their language, to develop their culture, and to strengthen their self-identity. In perspective, the law will be an appropriate instrument in securing the survival of the minorities as communities. The law guaranteeing a more comprehensive implementation of national and ethnic minority rights intends to serve first of all the interests of the citizens and the communities of minority origin of the Republic of Hungary, and consequently it also contributes to the unfolding of the Hungarian democracy, as well. The minority policy of Hungary is not subordinated in any way to the minority policies of other countries with respect to the Hungarian minorities. Nevertheless, the Republic of Hungary is aware of the fact that the question of realization of minority rights affects both foreign and security policy. Therefore it remains convinced that the law will have great significance and effect as the legal establishment of the noble, most precious guarantees, based on European values, going beyond the borders of Hungary as well."

46. It was on 18 December 1992, during the reporting period, that the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted. The Hungarian Government welcomed this important event in an official statement. This statement, along with the statement outlined above, contains both the national and international minority policy of the Republic of Hungary; the text of the latter therefore is quoted verbatim:

"Statement of the Government of the Republic of Hungary on the adoption of the United Nations Declaration on minority rights:

"The Government of the Republic of Hungary attaches great importance - in terms of international protection of human rights,

promotion of regional and international peace, security and stability, advancement of civilized norms of behaviour among States, and respect for individual freedoms alike - to the Declaration adopted by the United Nations General Assembly on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. By the adoption of the Declaration it has become universally recognized that comprehensive standard-setting on minority rights within an international document is a timely and necessary step, since protection and promotion of the identity of minorities and guarantees for their institutional participation in public affairs constitute a prerequisite for the democratic functioning of the State and the elimination of discriminatory political practice, thereby strengthening internal peace, stability and confidence in the democratic institutions.

"It is an historical paradox that the elaboration of the Declaration has been initiated almost a decade and a half ago by the former Yugoslavia, several regions of which now offer a series of tragic examples of how the pursuit of a policy of assimilation against minorities and violation of their rights can lead, in the absence of appropriate political culture and decisive action by the international community, to crimes against humanity and to ethnic cleansing.

"The Republic of Hungary, along with several other European States, advocated an instrument having high standards of the protection on the rights of minorities, on the grounds that a better framework should be provided for the protecting of the identity of the minorities and the democratic realization of their specific interests. Hungary, for its part, has been consistently striving for establishing a dialogue based on respect for international norms which would replace incitement to hatred, assimilation, a policy of discrimination, exclusive, anti-democratic practices, and deliberate raising of international tension. A decisive role in accelerating the process of the elaboration of the Declaration and arriving at a consensus was due to the fact that the international community perceives the unresolved ethnic conflicts accompanied by grave violations of human and minority rights as a source of danger that may not merely undermine the stability of certain areas or even whole regions, but ultimately pose a serious threat to international peace and security.

"The Declaration is the first comprehensive international document which stipulates the obligation of States to protect the existence and identity of minorities and promote their identity as well as the right of minorities to enjoy their own culture, to profess and practice their own religion, to use their own language, to participate effectively in decisions concerning them and to maintain contacts across frontiers. An essential element of the document is that it applies the exercise of these rights not only to individuals but also to their communities. The Declaration assigns as the task of the State, e.g. the creation of favourable conditions indispensable for the promotion of the minority language and culture, the creation of conditions for education in the mother tongue, as well as the learning of the minority language, and promotion of the dissemination of the history, traditions and culture of the minorities.

"States must respect and take into consideration the legitimate interests of minorities in applying their policy and practical programmes, as well as in their international cooperation, and take measures to assure them the possibility to participate fully in the economy. An important feature of the Declaration is that it makes the task of States to cooperate regarding minority issues, inter alia, in promoting the observance of the rights laid down in the document, thereby excluding the possibility of certain States rejecting, as interference into their internal affairs, any discussion of minority issues or debate on the problems either in a bilateral framework or at multilateral fora. It is the view of the Hungarian Government, that international cooperation on minority issues thereby becomes a legitimate and natural process, which has to be backed up, apart from the traditional ways and means of diplomacy, by the possibilities and system of measures provided by the United Nations mechanisms for monitoring human rights.

"The Government of the Republic of Hungary is firmly convinced that the elaboration and implementation of a document binding on States in terms of international law is indispensable to a genuinely effective international protection of minorities. The Declaration adopted by the United Nations can serve as a starting point for a process of codification that effectively protects the rights of minorities. The Hungarian Government will continue, by the diplomatic means at its disposal, to call for the earliest possible elaboration and adoption of a legally binding instrument that also contains international guarantees of universal protection for minorities."

Article 3

47. The Republic of Hungary condemns racial segregation and apartheid. The Republic of Hungary has fulfilled its obligations undertaken in this article also in terms of its consistent and firm condemnation of the policy of apartheid practised in the Republic of South Africa. Conversely, it fully supported the process of reforms started in South Africa, as a result of which the complete elimination of the apartheid regime can take place at last.

48. Regarding this article, it is worth noting that the previous National Assembly passed resolution No. 14/1994 (III.18) on 8 March 1994 on the fiftieth anniversary of the tragic events that followed the Nazi occupation of Hungary. In that resolution, the National Assembly paid tribute to all those who had lost their lives as a result of mass murders committed in concentration camps or elsewhere after 19 March 1944. Their tragic fate remains an eternal memento. The National Assembly in its resolution further invited the organizations and citizens of the country to commemorate the victims of this tragedy on 19 March or another convenient date. Numerous State and non-governmental commemorations, memorial meetings, arrangement of exhibitions and other programmes in memoriam of the holocaust victims took place in the country.

Article 4

49. The Republic of Hungary fulfils its obligation under article 4, paragraph (a), according to which States parties shall "declare an offence

punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof."

50. The Penal Code contains provision for "Criminal offence against a national ethnic, racial or religious group" (art. 156) among the crimes against humanity. According to this law "a person who causes a grave bodily or physical injury to a member of a national, ethnic, racial or religious group because of his/her being a member of the group, commits an offence and shall be punished with deprivation of liberty from two to eight years". The Penal Code also regulates the criminal offence of "Racial discrimination" (art. 157): "A person who commits an act prohibited by international law in order to assist a racial group in bringing another racial group under its rule, or to maintain such rule, or systematically oppresses the other racial group, unless the act constitutes a graver offence, shall be punished for a crime with deprivation of liberty from one to five years".

51. It was after the preparation of the previous report of the Government that Act XXV of 1989 introduced a new relevant criminal offence into the Penal Code regarding the Convention. A person who, in the presence of others, incites to hatred against the Hungarian nation or a national minority, or a people, religion or race, or particular groups of the population, commits the criminal offence of "affront to community" (art. 269) and shall be punished with deprivation of liberty up to three years.

52. The second part of the newly introduced offence was also to punish the crime manifesting itself in using insulting or derogatory expressions with respect to the Hungarian nation, a particular nationality, people, religion or race, or in committing another similar act. However, the Constitutional Court in its resolution No. 30/1992 (V.26) of May 1992 established the unconstitutionality of this part and annulled it. In judging the constitutionality of article 269 of the Penal Code the Constitutional Court examined the following questions:

(a) Is it unavoidable to restrict the freedom of expression and the freedom of the press at the occurrence of crimes outlined in the facts of cases?

(b) Does the restriction meet the proportionality requirements, i.e. are the system of means of the penal law in general, and the given penal facts of case within it, necessary and appropriate to reach the desired goal?

53. According to the opinion of the Constitutional Court the crime prohibited by article 269, paragraph (1), of the Penal Code affects society so gravely and has such serious consequences that the civil law and petty criminal law are insufficient against those committing such crimes. The firm expression of disapproval and condemnation of such crimes would constitute reinforcement of the democratic ideas and values offended by those committing such acts and therefore the restoration of violated legal and moral order requires the means of enhanced penal law.

54. A more serious form of "affront to community", that of "incitement to hatred" meet the requirement of proportionality and only the most dangerous crimes are within its scope, and the elements of facts can unambiguously be interpreted by those applying the law. In the case of "abuse", however, the fact that the insulting expression or an act of the same value is disturbing of public order is not an element of the facts of the case. Unlike "incitement to hatred", it is not inferable from the exhibited behaviour. The Penal Code takes as its point of departure that the use of an expression which insults a national or religious community in general violates the desirable public order. So the non-material facts of criminal case protect the public order, the public and social peace in itself, in an abstract way. The criminal offence is considered as committed even in the case where the insulting expression, owing to the circumstances, does not endanger individual rights. Such an abstract endangerment of the public order is an insufficient reason to restrict constitutionally the freedom of expression by penal law punishment.

55. The Constitution ensures that free communication - individual behaviour and the social process - and the basic right to freedom of expression are separate from the content of such expression. In this process, there is room for every opinion, whether it is good or harmful, pleasant or insulting, especially because the qualification of the opinion itself is also a product of this process. In order to maintain public order it is not inevitable that the law should sanction the use of insulting or derogatory expressions in the presence of others with respect to the Hungarian nation or to particular national, religious or racial groups (or the commission of other similar acts) with penal law punishment. In the case of "abuse", the offence unnecessarily and, compared to the desired goal, disproportionally restrict the right to freedom of expression. The abstract, possible threat to public order is an insufficient reason to restrict, according to article 269, paragraph (2), of the Penal Code, the basic right to freedom of expression that is indispensable for the functioning of a democratic State based on the rule of law.

56. According to the resolution of the Constitutional Court, the dignity of community may be a constitutional limit to the freedom of expression. Thus, the resolution does not exclude the possibility that the legislator should provide for this point even with penal law protection beyond the case of incitement to hatred. However, other legal means are also appropriate for the efficient protection of the dignity of community, e.g. the expansion of the possibility to impose compensation for non-material injuries.

57. The crime of "use of totalitarian symbols" (art. 269/B) as a further new relevant criminal offence was introduced into the Penal Code by Act XLV of 1993 on 21 May 1993. A person who spreads, displays before a large number of people or exhibits in public the swastika, SS badge, arrow-cross, hammer and sickle, five-pointed red star or symbols of these commits a felony and shall be punished with a fine, unless a graver offence has been committed. A person who commits such acts for informational, educational, scientific and artistic reasons or to give information about the present time shall not be punished. The rules above do not apply to the official symbols of other States.

58. An important event of the reporting period in terms of penal law is that in addition to the new Act on Data Protection (Act LXIII of 1992) the personal data files qualified as special are given increased protection by the fact that the legislator has determined the abuse of such data as a criminal offence. The crimes and minor offence of "abuse of special personal data" are graver cases of the minor offence of "unauthorized data use" (art. 177/A) which was introduced by Act XVII of 1993 into the Penal Code on 15 May 1993.

59. Personal data concerning racial origin, belonging to a nation or nationality, ethnic affiliation, political opinion or party affiliation, religious or other belief are qualified as special data. A person who unlawfully makes public or without authorization uses or makes available for non-authorized persons special data obtained while dealing with data defined in the law on the protection of personal data commits the crime of "abuse of special personal data" and shall be punished with deprivation of liberty of up to three years. Furthermore, a person who illegally obtains special data for him/herself or someone else commits a felony and shall be punished with deprivation of liberty of up to two years or with a fine.

60. Árpád Göncz, President of the Republic of Hungary, announced at the plenary session of the National Assembly on 7 April 1994 that for a better and full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination he considers an amendment to the Penal Code to be urgently necessary. The President has prepared his proposed amendment in addition to article 156 of the Penal Code, which he submitted to the Government. According to this bill, to be submitted to the National Assembly by the Government, the persecution of national, ethnic, racial or religious groups, humiliation and injury of persons belonging to such groups and causing of fear against them would be punishable. The explanatory memorandum to the proposal states: "it is widely known that recently incidents in the form of attacks glaringly against communities but first of all against certain national, ethnic, racial or religious groups of citizens have proliferated on the part of particular extremist political groupings. The Hungarian law fails to handle these incidents adequately." The Government concurs with the President on the issue and the relevant Act will be submitted to the National Assembly.

Statistical data

61. Statistical data regarding the above criminal offences are given below.

62. On acute suspicion of the crime of "racial discrimination" as defined by article 157 of the Penal Code, an investigation was ordered in nine cases and charges were brought in seven cases in 1993. (The investigation had to be given up before formal charges were made in two cases because in one of them commission of the act was impossible to prove and in the other one the offender could not be identified.) Seven of the eight proven criminal offences were committed in Budapest and one in the city of Pécs; 20 of the 24 offenders were juveniles.

63. Concerning commission of the offence of "affront to community" as defined in article 269 of the Penal Code: in 1990 the investigation was completed in 39 cases and charges were brought in 5; in 1991 the investigation was

completed in 27 cases and charges brought in 8; in 1992 the investigation was completed in 21 cases and charges brought in 2; in 1993 the investigation was completed in 33 cases and charges brought in 9. In nearly half of the cases the investigation was stopped because the offenders could not be identified in the course of the investigations, and in about one tenth of the cases it was proven that no criminal offence had been committed. Half of the cases consisted of criminal procedures undertaken on the basis of offences committed in Budapest, and the other half was evenly distributed among the individual counties. Almost every offender was a juvenile or young adult (under the age of 24). Four of the offenders were female. This explains the fact that the court placed 7 of 12 persons condemned for the offence in the listed years on probation instead of punishing them, and imposed fines on 4 persons and punished 1 person with suspended deprivation of liberty. Most of the offended parties were persons of Gypsy origin living in Hungary and some of them were coloured people from foreign countries.

64. As above, the Constitutional Court annulled paragraph (2) of "affront to community" (art. 156 of the Penal Code) by its resolution 30/1992 (V.26) AB. Since that date "a person who, in the presence of others, uses insulting or derogatory expression with respect to the Hungarian nation, a particular nationality, people, religion or race, shall not be punished". According to paragraph (1) of article 269 still in effect, only the incitement to hatred is punishable. Therefore, the number of criminal procedures initiated with regard to such crimes and finally qualified as mentioned above is very slight.

65. Among the cases that occurred the following can be considered typical. According to one of the relevant sentences by the Budapest City Court, the three defendants, members of a "skinhead" gang, were drinking in a brasserie and then they left for another bar. While going there, they met two Pakistani citizens who were students at the Technical University of Budapest. They attacked the two Pakistanis by punching, kicking and beating them with baseball bats. As a result of the act one of the offended parties suffered wounds which healed within eight days. The court found the defendants guilty of attempting to commit grievous bodily injury, instead of committing the offence defined in article 156 of the Penal Code. The Budapest City Court did not establish the commission of the criminal offence defined in article 156 of the Penal Code in its sentence No. 6.B. 311/192, although it did establish the fact that the defendants had injured parties of Gypsy origin or from foreign countries exclusively for their membership of certain national or religious groups. In its sentence No. Bf. IV. 1354/1993/13 the Supreme Court stated that the acts by the defendants, although to some extent having some organized character, had not been aimed at partial or full extermination of particular racial groups and had not been addressed against such groups themselves; therefore, they could not be classified as offences defined in article 156 of the Penal Code.

66. The statistical statement on the specified criminal offences is as follows:

Affront to community

Year	Completed investigations in total	Investigations concluded with										
		Accusation	Termination	Reasons*								Other
				1	2	3	4	5	6	7	8	9	
1990	39	5	33	4	4	2	15	1	-	-	6	1	1
1991	27	8	16	1	-	2	11	1	-	-	-	1	3
1992	21	2	19	8	3	1	6	-	1	-	-	-	-
1993	33	9	23	3	1	2	14	-	-	1	-	2	1
Offence against national, ethnic, racial or religious group													
1993	9	7	2	1	-	-	1	-	-	-	-	-	-

* See below for the reasons of termination.

Persons condemned for commission of affront to community

	Validly condemned								
	1990			1991			1992		
	Total	Female	Juvenile	Total	Female	Juvenile	Total	Female	Juvenile
Suspended deprivation of liberty	1	-	-				-		
Enforceable fine	1			-			3		
Independently imposed supplementary punishment	1	-	1	4	1	-	2	-	-
Punishment, put on probation	1	-	1	4	1	-	2	-	-
Total	2	-	1	4	1	-	5	-	-
Young adults among the offenders	-			2	-		4		

Reasons for termination of investigation

1. No criminal offence.
2. Felony instead of crime.
3. No commission of crime could be proven.
4. Offender could not be identified.
5. The commission of crime by the suspect could not be proven.
6. Juvenile.
7. Other reason, excluding punishability.
8. Pardon.
9. Reprimand.

Affront to community

Place of commission of criminal offence	Year criminal offences became known			
	1990	1991	1992	1993
Capital City	19	8	2	14
Baranya				
Bács-Kiskun	1			
Békés	2			
Borsod-A-Z	3			
Csongrád		2		1
Fejér			1	
Győr-M-S			3	
Hajdú-Bihar	2	2		4
Heves	2			3
Jász-N-Sz		1		
Komárom-E				2
Nógrád		2		
Pest		1		1
Somogy	1		1	
Szabolcs-Sz-B		1		
Tolna		1		
Vas		1		
Veszprém		1	2	
Zala	1			
Abroad				1
Total	31	20	9	26

Affront to community

Place of residence of offender	Offenders identified															
	1990				1991				1992				1993			
	Offenders were				Offenders were				Offenders were				Offenders were			
	Total	Female	Juvenile	Young adult	Total	Female	Juvenile	Young adult	Total	Female	Juvenile	Young adult	Total	Female	Juvenile	Young adult
Budapest	4	1	1	1	6			3					1			
Baranya																
Bács-Kiskun																
Békés	2			2												
Borsod-A-Z													1			
Csongrád																
Fejér	1			1												
Győr-M-S													2		2	
Hajdú-Bihar													2		1	1
Heves																
Jász-N-Sz																
Komáron-E																
Nógrád													2			1
Pest	2		1	1	3			2								
Somogy					1			1	1			1				
Szabolcs-Sz-B																
Tolna																
Vas																
Veszprém																
Zala																
Külföldi					1			1	3			2				
Total	9	1	2	5	11			7	4			3	8		3	2

Offences and offenders against national, ethnic, racial or religious groups in 1993

Place of commission of crime Place of residence of offender	Crimes that became known	Offenders identified			
		Total	Offenders were		
			Female	Juvenile*	Young adult**
Total	8	24	3	20	4
In the capital	7	19	3	17	2
In Baranya county	1	5	-	3	2

* Aged 14 to 17.

** Aged 18 to 24.

Article 5

67. As outlined in detail in part I of the report, one of the main driving forces of the democratic transformation in Hungary was the prevalence of human rights and fundamental freedoms. New Acts were passed on the Right to Freedom of Association (Act II of 1989), Right of Assembly (Act III of 1989), and Freedom of Conscience, Religion and the Churches (Act IV of 1990). All three Acts establish the above rights as fundamental freedoms of every individual, recognized and guaranteed by laws of the Republic of Hungary. The notable provisions of these laws with respect to the Convention are as follows.

68. The exercise of one's right to freedom of association may not violate article 2, paragraph (3), of the Constitution, i.e. "no activity of a social or State organization or no endeavour of any citizen may be aimed at acquiring or exercising power by violent means, or at acquiring exclusive power. Everyone has the right and is obliged to take action against such endeavours in any lawful manner." Exercise of rights of association may not constitute a criminal offence or attempt to commit a criminal offence, nor may it violate the rights and freedoms of others.

69. Hungarian citizens, non-Hungarian citizens settled in Hungary or in possession of a residence permit and, in the case of international social organizations, other non-Hungarian citizens are allowed to be members, administrators or representatives of social organizations, unless prohibited from taking part in public affairs. Only a Hungarian citizen is allowed to be a founder or official of a party, however, any person of any nationality may become a member. Members of a party not possessing Hungarian citizenship are not entitled to run as a candidate or to vote.

70. The exercise of the right of freedom of assembly cannot constitute a criminal offence or attempt to commit an offence, and may not violate the rights and freedoms of others.

71. A Hungarian or non-Hungarian citizen in possession of a residence or settlement permit may organize political events.

72. The Act on Freedom of Conscience, Religion and Churches declares that nobody may be disadvantaged or obtain advantage as a result of religion, beliefs, their expression or practice. No data concerning religious or other beliefs shall be recorded in official (State) registers. No one may be prevented from exercising the freedoms of religion or conscience, however, unless the law provides otherwise, exercise of such rights does not exempt one from fulfilling the civil duties. The individual and communal practice of religion should be made possible to those nursed in social and health-care institutions, child-care and youth protection institutions and also to those in custody in law enforcement institutes. Those in military service are free to practise their religion in accordance with the rule of operation of the military organization and fulfilment of military service. Any church may be founded for any type of religious activity not violating the Constitution or the law.

73. During the reporting period Hungary has become a haven for refugees. The Hungarian refugee policy is based on the principle that the question of refugees is indivisibly linked to the violation of human rights and fundamental freedoms. It is the inalienable right of every nation, community and individual to live on its native land where their human rights and fundamental freedoms should be guaranteed. It is acknowledged that an appropriate human rights policy serves as the most effective way of preventing and handling the problem of refugees. The voluntary repatriation of refugees, with proper guarantees, is an important tool that has not been adequately utilized so far. Although Hungary acceded to the Geneva Convention of 1951 relating to the Status of Refugees with the territorial reservation provided under article 1, section B, protection and shelter are given to refugees from countries outside Europe provided that they meet the criteria contained in the Geneva Convention. The revision of the aforementioned reservation is currently under consideration.

74. The refugee policy of the Government is widely supported by the society. This support was manifested in the form of direct aid to tens of thousands of refugees coming both from Romania in the late eighties and early nineties and from the former Yugoslavia in past years. The Office of United Nations High Commissioner for Refugees recommended the Hungarian refugee policy and the form of aid (directly to the self-governments and families; not necessarily and exclusively building of camps, but encouragement of willingness to give shelter to the families) as a precedent to be followed elsewhere.

75. Fact Sheet No. 1993/3 provides further information - facts and figures - on the activity by the Republic of Hungary concerning refugee affairs and migration.

76. A new Act - No. LXXXVI of 1993 - on the Entry, Residence and Immigration of Foreign Persons into Hungary has been adopted during the reporting period. The new Act has rendered the system of legal remedies wide-ranging compared to the former regulation and within this framework it has also opened the possibility of court competence. The other significant progressive change compared to the former regulation is that, with regard to decisions taken within discretionary jurisdiction, the State has created self-restriction by specifying in the law the possible and applicable causes of refusal of entry and expulsion. It is also noteworthy that from now on positive discrimination

will prevail in the case of family unifications and, furthermore, the law gives preference to those who have resided in Hungary for an extended period.

77. During the reporting period an Act on the Protection of Personal Data and the Publicity of Data of Public Interest was adopted. Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest promulgated on 17 November 1992 qualifies personal data concerning racial origin, belonging to a nation or nationality or ethnic affiliation as special data and provides increased protection to them. According to the provisions of the Act, personal data concerning political opinion or party affiliation, religious or other belief, health condition, pathological addition, sex life and criminal record are also qualified as special data. As has already been reported concerning article 4, penal sanctions for abuse of special personal data more serious than for unauthorized data use are imposed by the Penal Code amended by the Act above.

78. New Acts on election adopted after the submission of the previous report, in the course of change of the system, such as Act XXXIV of 1989 on the Election of Members of Parliament, or Act LXIV of 1990 on the Election of Representatives of Local Self-Governments and Mayors, ensure universal and equal suffrage. In terms of promoting the implementation of provisions contained in the Convention it is a remarkable development that the latter Act ensures the active suffrage - the right to vote - of non-Hungarian citizens with permanent residence in Hungary.

79. The provisions of Law Decree No. 11 of 1979 on the Rights of Condemned Persons have been re-regulated by Act XXXII of 1993. According to this law the condemned person is entitled to, inter alia, freely choose religious or conscience belief and express or practise it. In terms of the Convention a further relevant right is that a condemned person of foreign nationality has the right of access to the diplomatic or consular mission of his/her State or to contact its representative.

80. Article 5 of the Labour Code (Act XXII of 1992) declares the prohibition of negative discrimination as a basic principle. Accordingly, it is forbidden to discriminate among employees on the basis of their sex, age, nationality, race, origin, religion, political beliefs, membership in an organization representing their interests or involvement in any related activities, or any other factor unrelated to their employment. However, at the same time, discriminatory treatment arising unequivocably from the type or nature of the work shall not be considered negative discrimination. The Supreme Court's College on Labour Issues has stated in its decision No. 97 concerning this latter provision: discrimination based on the relevant and lawful conditions to be taken into consideration in the course of employment is not qualified as negative discrimination.

81. If any dispute arises with respect to the violation of the prohibition of negative discrimination, the employer must produce evidence that his/her action did not violate this prohibition. The employer must provide the opportunity to employees for promotion without discrimination, and solely on the grounds of seniority, professional skills, experience and performance. Employment rules may prescribe affirmative action in respect of a specific set of employees working under certain conditions.

82. Unlike the previous uniform regulation simultaneously with the new Labour Code a new independent Act - No. XXIII of 1992 - taking into consideration the international obligations of the Republic of Hungary has been adopted on the Legal Status of Public Servants. The introductory part of the new Act declares that the prerequisite of a democratic public administration being generally respected is that public affairs be managed by public servants not committed to party policies, acting lawfully, having up-to-date professional skills and being impartial. It is for the sake of realization of this goal, among others, that public servants, in conformity with the new Act, have to pass a basic exam and subsequently, within a fixed period, a special exam on public administration. The domestic and international provisions prohibiting any form of racial discrimination form part of the examinations.

83. Act I of 1992 on Cooperatives promulgated on 20 January 1992 during the reporting period provides that, in pursuance of the principle of open membership, in the course of admitting members and in defining the rights and duties of members negative discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other situation is prohibited.

84. Act IV of 1991 with effect from 1 March 1991 on the Promotion of Employment and on the Provision for Unemployed Persons provides that foreign citizens in Hungary are allowed to work only with permission. According to the provisions of the Act no permission is required for refugees and immigrants in possession of an identity card that entitles them to permanent residence, foreign persons in possession of residence permission to settle, and for those in the process of obtaining refugee status to perform work. The law authorizes the Minister of Labour to establish further exemptions to the above-mentioned permission requirements and to lay down the detailed rules of the permission. On the basis of this authorization, in conformity with Decree No. 7/1991 (X.17) by the Minister of Labour on permission for foreign persons to perform work in Hungary, no permission is required:

(a) In case an inter-State or intergovernmental agreement and international contract (agreement) so provides;

(b) For foreign persons delegated by the parties concerned to diplomatic (consular) missions or other bodies of foreign States in Hungary, and to international organizations having headquarters or offices in Hungary or to a joint organization established by inter-State agreement;

(c) To perform a procedure of installation, guarantee, servicing or warranty activity on the basis of a contract with a foreign supplier;

(d) For a leading official of a company with foreign financial interests to perform work;

(e) For a widely known foreign person invited by higher educational, scientific research or cultural institutions to perform educational, scientific or cultural activity.

85. The labour centre issues a labour permit for a foreign person if in the country (capital) in question no Hungarian labour adequately trained for the

work to be performed is available and the employment of the foreigner is undoubtedly justified considering other aspects. The Minister of Labour, having consulted the Committee on the Labour Market, can define in a decree those spheres of activity in which foreign persons cannot be employed due to the tendency and composition of unemployment in Hungary. The labour centre issues the permission irrespective of the above-mentioned aspects.

(a) In case the inter-State or intergovernmental agreement provides an opportunity to hire foreign employees within stipulated limits, until the number of foreign persons equals the amount fixed in the agreement;

(b) To the spouse or child of a foreign person having been employed for eight years, at least, in Hungary if he/she has lived here with the foreign person for at least five years.

Article 6

86. The legal protection and the system of legal remedies are functioning efficiently in Hungary. The laws on legal procedures lay down the right to equality before the law, the freedom of use of mother tongue in spoken and written form and provide that lack of knowledge of the Hungarian language shall not be prejudicial to any person.

87. One of the basic principles of the criminal procedure is the principle of proceedings conducted ex officio. Thus, in the presence of the conditions defined in Act I of 1973 on Criminal Procedure, the authorities acting in criminal cases have a legal obligation to conduct criminal proceedings. The authorities acting in criminal cases are under the obligation to conduct proceedings if there is reasonable suspicion that criminal offences outlined in article 4 - implementation of provisions of the Convention - have been committed. A further basic principle of the criminal procedure is the right to legal remedy. Thus, legal remedy shall be allowed against the decisions and measures of the authorities or in case of their failure to take action, unless otherwise provided by the Act.

88. As for the system of legal remedies, it can be said in general that in a legal dispute within the competence of court in the first instance a single-grade legal remedy is ensured with an adequate time period to submit a case. No compulsory form is defined for the submission of a case. The final decision of the court, provided that certain conditions exist, can be contested by motion for retrial or review.

89. A remarkable event of the reporting period in this respect is the establishment by the Constitutional Court in its resolution No. 9/1992 (I.30) of the unconstitutionality of the system of judicial protest and the annulment of the legal provisions on judicial protest with effect from 31 December 1992. The President of the Supreme Court and the Supreme Prosecutor had exclusive discretionary power to raise a judicial protest and could take a decision relating to judicial protest without explanation. The Constitutional Court has established that these two legal institutions subordinated to the discretionary decision of these two authorized legal authorities were against the requirement of the principle of the rule of law, the institution of legal force and the fight of disposal of the parties in civil affairs.

90. Within the system of legal remedies of administrative procedure, the general right to appeal is complemented by the opportunity for the superior administrative body to take supervisory action, through which it can change or annul the decision by the administrative body violating the law, and then it can order the administrative body in question to conduct a new procedure. If the prosecutor finds that a law issued by an organ under his general legal supervision or any other legal means of the State administration violates the Constitution or a statute of higher level, he can lodge a protest with the organ in question for it to be annulled. To put an end to a violation of law owing to unlawful practice or negligence, the prosecutor can lodge an objection addressed to the head of the organ in question; if the danger of violation of the law exists, the prosecutor can submit a notice to prevent it.

91. In this field, the most significant legal development was the possibility to contest administrative decisions before court. Previously, positive succession prevailed and it was only possible to contest administrative decisions before court in the cases specified by the law. The present regulation has made the practice of contesting administrative decisions before court general, and this is restricted by a definitely limited negative succession. An instance within the scope of the latter is when the administrative decision is to execute the final court decision, e.g. a decision ordering a person liable to military service to report to the drafting committee and attend medical examination, decision on safeguarding the order of the frontier.

92. The National Assembly Commissioner of Civil Rights (Ombudsman) will play an important role in the full realization of the principle of appropriate legal protection. One of the primary goals of the Parliament formed as a result of the parliamentary elections in 1994 is the election of the Ombudsman.

93. A cornerstone in the creation of the rule of law was the establishment of the Constitutional Court in 1989. One of the directions of activity of the Constitutional Court was aimed at the revision of legal rules in terms of constitutionality, and at the pre-examination of certain provisions of bills with respect to their unconstitutionality, in order to prevent the Parliament from adopting laws at variance with the Constitution. If the Constitutional Court finds laws and other rules non-constitutional it will annul them, and this preliminary control can prevent unconstitutional laws and other rules from entering into force.

94. With respect to this article of the Convention, however, the activity of the Constitutional Court concerning complaints regarding the constitutionality of certain legal provisions is also considered important. Article 48, paragraph (1) of the Act on Constitutional Court declares that a person whose right has been violated due to an unconstitutional legal provision and who has exhausted available domestic remedies or if no other domestic remedies are available, can submit a complaint regarding the constitutionality of certain legal provisions to the Constitutional Court. The complaint regarding the constitutionality of certain legal provisions can be submitted within 60 days from the receipt of the final decision. In the absence of a normal legal remedy, anyone whose rights may have been

violated can apply to the Constitutional Court and, if all normal available remedies have been exhausted, a complaint regarding the constitutionality of certain legal provisions can still be submitted.

95. Beyond the available legal remedies, Hungary has taken numerous steps recently to ensure that legal remedies are available before international forums in case of individual complaint, as outlined in the section on general remarks.

Article 7

96. Act LXXIX of 1993 on Public Education adopted by the National Assembly on 12 July 1993 has stipulated the following objectives: assurance of the exercise of the right to education based on equal opportunity, a right laid down in the Constitution of the Republic of Hungary, and promotion of the freedom of conscience, freedom of religion and the nurturing of patriotism in public education, in implementation of the right of national and ethnic minorities to education in their mother tongue and the realization of the freedom of education and freedom of teaching. Article 4 of the Act provides that in the course of carrying out their tasks undertaken in the area of education and teaching the State and the local authorities are obliged to respect the rights of parents or guardians in such a way that children receive teaching and education which conform to their religious and ideological convictions. State and local authority institutions of education and teaching may not be committed to any religion or ideology. The curricula of State- and local authority-operated schools must ensure an objective and manifold projection of knowledge, including religious and ideological information. Schools have to make sure that students master the basic knowledge of moral issues. The curricula of State and local-government schools must contain the teachings of the moral and cultural-historical content of religions in an objective and unbiased way.

97. The public television and radio broadcast the programmes of minority studios regularly.

98. In the last few years, there was a wide-ranging reactivization of civil society, a phenomenon closely connected to the change of system. Numerous civil initiatives have developed in the field of education, teaching, culture and information, aiming at the preservation of the identity of various ethnic groups, promotion of understanding and tolerance between various ethnic groups, and elimination of prejudices resulting in racial discrimination. The Government welcomes every activity of this kind and considers it as an indispensable pillar, in addition to the undertaking by the State in preventing racial discrimination.

99. Merely as a case in points it is noteworthy that in 1992 with the support of the Roland S. Lauder Foundation, a new Lauder Javne Jewish Communal School has been established in Budapest with the goal of providing high-level education to Jewish children from the ages of 3 to 18.

100. The first of its type in Europe, a Gypsy grammar school has been opened in the town of Pécs. A secondary school has been established by the Ghandi Foundation. On the occasion of this event an exhibition of photographs

entitled "Photos of the history of Hungarian Gypsies in the twentieth century" was arranged at the University of Pécs. A Day of Romany Culture has been arranged twice so far with the assistance of the Hungarian Writers' Association, aiming at the creation of a tradition. A Festival of Gypsy Films took place several times in Budapest.

101. In 1992 the Hungarian Section of the International League Against Anti-Semitism and Racism was formed. Its activity is not restricted to actions against anti-Semitism only, but is aimed at the protection of all minority groups in Hungry. Numerous civil organizations function with the same goal. For instance, the widely acknowledged activity of the Christian-Jewish Association and the Martin Luther King Society is worth reporting with appreciation. The latter provides legal aid, social and other assistance to foreign students in Hungary.

List of annexes*

1. The Constitution of the Republic of Hungary.

2. The Republic of Hungary, Fact Sheets on Hungary No. 1/1990.

3. National and Ethnic minorities in Hungary, Fact Sheets on Hungary No. 9/1991.

4. Government Decree No. 34/1990. (VIII.30) Korm. on the Office for National and Ethnic Minorities.

5. Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

6. A brief summary of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

7. A review on the Hungarian Gypsy minority.

8. Declaration on the Principles of Cooperation between the Republic of Hungary and the Ukrainian Soviet Socialist Republic in the guaranteeing of Rights for National Minorities.

9. Protocol between the Republic of Hungary and the Republic of Croatia on the Principles of Cooperation in Guaranteeing of Rights for National Minorities.

10. Convention on providing special rights for the Slovenian minority living in the Republic of Hungary and for the Hungarian minority living in the Republic of Slovenia.

11. Activities of the Republic of Hungary regarding international refugee matters and migration, Fact Sheets on Hungary No. 3/1993.

12. Act LXXXVI of 1993 on the Entry, Stay in Hungary and Immigration of Foreigners.

13. Act XXXIV of 1989 on the Election of Members of Parliament.

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* Available for consultation in the file of the Secretariat.

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OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Thirteenth periodic reports of States parties due in 1994

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

[20 April 1995]

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* For the eleventh and twelfth periodic reports submitted by the Government of the United Kingdom and the summary records of the meetings of the Committee at which those reports were considered, see:

Eleventh periodic report - CERD/C/197/Add.2 (CERD/C/SR.907-908).
Twelfth periodic report - CERD/C/226/Add.4 (CERD/C/SR.996-998).

The annexes are available for consultation in the files of the secretariat.

The information submitted by the United Kingdom in accordance with the consolidated guidelines concerning the initial part of reports of States parties is contained in the core document HRI/Core/1/Add.5/Rev.1.

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Preamble

1. The United Kingdom submits its thirteenth periodic report on the legislative, judicial, administrative and other measures it has taken during the period ending 31 July 1994 in order to give effect to the International Convention on the Elimination of All Forms of Racial Discrimination.

Introduction

2. It is a fundamental objective of the United Kingdom Government to enable members of ethnic minorities to participate freely and fully in the economic, social and public life of the nation, with all the benefits and responsibilities which that entails, while still being able to maintain their own culture, traditions, language and values. Government action is directed towards addressing problems of discrimination and disadvantage which prevent members of ethnic minorities from fulfilling their potential as full members of British society. It should be noted that almost 50 per cent of those from an ethnic minority background were in fact born in the United Kingdom, and that 75 per cent are United Kingdom citizens.

3. The United Kingdom Government does not permit or allow any artificial barriers on the grounds of race, nationality, or colour which might affect this basic aim. All citizens of the United Kingdom have the same rights under the law. This underlying principle underpins the United Kingdom's position on all the articles of the Convention covered in the report, even when in this report specific reference to United Kingdom action has not been made under individual articles.

4. The United Kingdom Government is firmly committed to the elimination of all forms of racial discrimination and to the promotion of equality of opportunities. Its commitment to eliminating the barriers to full participation is expressed in two main ways. First in legislation: the United Kingdom has some of the most stringent and comprehensive anti-discrimination legislation in Europe. These laws make racial discrimination in employment and in the provision of goods and services generally unlawful. There is a statutory body - the Commission for Racial Equality - which promotes the law and offers advice and guidance on how to avoid racial discrimination. The second leg of this policy is in the many programmes and initiatives which have been introduced to regenerate the economy, particularly in the inner cities where the benefit is felt especially by many ethnic minority communities.

5. There are a large number of programmes aimed at tackling discrimination and disadvantage, several of which are set out in this report: the Department of Employment's Equal Opportunities Ten Point Plan; grants under section 11 of the Local Government Act 1966 (described in paras. 94-98) and the introduction of the Single Regeneration Budget (para. 101) for instance.

6. The United Kingdom Government is also committed to providing strong protection for ethnic minorities against harassment and violence within the overall framework of the criminal law and of the pattern of rights and

principles enjoyed by the population at large, which fit into the broader systems of freedoms and rights to individual expression and free speech which the United Kingdom enjoys.

7. The United Kingdom Government believes that the complex and sensitive mechanisms in place to combat racism and discrimination have helped improve the position of ethnic minorities in the United Kingdom. Research suggests that the majority of the population supports race relations policies and shows that racial prejudice is diminishing among the white population generally and within the younger age group in particular. The fact that minorities have more confidence in the mechanisms and procedures established to prevent discrimination is also shown in a greater willingness to take action under, for example, industrial tribunals (see paras. 106-108). There are also signs of increased economic activity and prosperity in many areas of the ethnic minority community. However, there are no grounds for complacency: discrimination and hostility still exist, and some sections of the ethnic minority communities still have special needs which Government policies are designed to address.

European Cooperation

8. The United Kingdom Government does not believe that the best way to improve race relations across different countries is to impose uniform requirements. However, the United Kingdom is very strongly committed to working closely with other countries to tackle racism, and already plays a major role in a variety of international forums. The focus is on pragmatic action, sharing experience and expertise and by encouraging practical initiatives which can be adapted to reflect the various experiences of different countries. For example, the United Kingdom is a very active member of the Council of Europe's European Committee on Migration (CDMG) and currently holds the position of Vice-Chairman. This Committee is an important forum for exchanging views on developments in the large number of member and observer States. The United Kingdom takes an active part in discussions under EU, OSCE and other auspices to encourage the adoption of good practice at national level and to avoid duplication with the work of other international bodies.

I. GENERAL

Race Relations Act 1976

9. Under the **Race Relations Act 1976** discrimination is generally unlawful in employment, education and the provision of goods, facilities, services and premises. The Act also makes unlawful "indirect discrimination" - that is a requirement or condition which is imposed equally on all racial groups, but which can be met by a much smaller proportion of people of one group compared with the proportion of people not of that group. The Act provides for enforcement through industrial tribunals or, in some cases, civil proceedings. The Act also established the **Commission for Racial Equality** with duties to work toward the elimination of discrimination, to promote equality of opportunity and good race relations, and to keep under review the working of the Act (see paras. 107-108). Copies of the Act were distributed with the

fifth periodic report and a detailed description of the provisions of the Act were provided in the seventh periodic report. The Committee is invited to refer to these earlier reports.

Ethnic breakdown of the population of Great Britain

10. The 1991 Census of Population was the first in the United Kingdom to include a question on ethnic origin and has provided detailed information on the size, geographical distribution and characteristics of the ethnic minority population. This information will help central and local government, health authorities, private employers and voluntary bodies to know what inequalities exist and to develop policies to tackle them.

11. The Census question used nine categories to classify ethnic groups:

White
Black Caribbean
Black African
Black Other
Indian
Pakistani
Bangladeshi
Chinese
Other.

12. The Black Other and Other categories allowed people to describe their ethnic groups in their own words.

13. Based on answers to the 1991 Census, 5.5 per cent (just over 3 million) of residents of Great Britain belonged to ethnic groups other than white. The largest ethnic minority group was Indian, which formed 1.5 per cent of the total population, or 28 per cent of the ethnic minority population. A breakdown of the population of Great Britain by ethnic groups is given in annex 1.

14. The Census also provided detailed geographical information on the ethnic minority population and showed that the proportion of the population in ethnic minority groups varied considerably throughout the country but was concentrated in the metropolitan and industrial areas. For example, over a quarter of the population in nine London boroughs and two local authority districts outside London - Slough and Leicester - belonged to ethnic minority groups. Annex 2 shows the distribution of the ethnic minority population as a proportion of the total population for local authorities in Great Britain. Other areas covered by the Census included sex and age, educational qualifications, economic position, country of birth, housing and household composition. Further information about the changing position of ethnic minorities in Great Britain is in annex 3.

Northern Ireland

15. There are believed to be around 10,000 to 15,000 members of ethnic minority groups in Northern Ireland.

16. The Government accepts the principle that protection should be given to those who suffer from discrimination on the grounds of race. It is giving very close consideration to the scope for legislation in Northern Ireland to outlaw racial discrimination and to other steps which might be taken to promote equality and equity for ethnic minorities.

17. In December 1992 a consultation document entitled "Race Relations in Northern Ireland" was published which examined the question of legislation and the needs of ethnic minorities and Irish travelling people.

18. The consultation exercise ended on 30 April 1993 and brought some 55 responses. A wide range of constructive views were received from organizations and individuals throughout the community, including members of ethnic minorities, travellers, civil rights bodies, etc. on how best to provide protection, equality of opportunity and equity of treatment for members of minority groups.

19. The United Kingdom Government is now examining the issues raised during the consultation period, which include racial abuse and harassment, social isolation, problems with educational attainment, difficulty in obtaining public services and scarce child-care facilities.

20. There is already government assistance for members of the ethnic minority communities normally resident in Northern Ireland. They are entitled to the full range of services provided by government agencies and, where appropriate, agencies have developed policies and programmes to assist the ethnic minority communities to make the full use of these services. Much of this assistance is provided in conjunction with voluntary organizations involved in the welfare of ethnic minority groups, who are helped by grant aid from central government departments. Details of Departmental policies and programmes are contained at annex 4.

21. The Secretary of State for Northern Ireland has approved revised Policy Appraisal and Fair Treatment (PAFT) Guidelines which have been issued to all Northern Ireland Departments and the Northern Ireland Office. The Guidelines, which came into effect on 1 January 1994, are designed to ensure that those responsible for the development of policy and delivery of services take account of the impact of government policies on a broad range of social groups and the need to secure equality of opportunity and equity of treatment for these sections and the community, including people of different ethnic groups. The Guidelines apply to all Northern Ireland Government Departments, the Northern Ireland Office and Next Steps Agencies. (Next Steps Agencies are being established to deliver government services more efficiently and effectively within available resources for the benefit of taxpayers, customers and staff. They carry out executive functions of Government, as distinct from policy advice, in units created within departments, referred to as agencies.) In addition, Departments will be expected to use all appropriate means to ensure that Non-Departmental Public Bodies comply with PAFT, and to consider what practical steps they can take to promote compliance by operators of contracted-out services.

II. INFORMATION RELATING TO ARTICLES 2-7 OF THE CONVENTION

Article 2

22. The Introduction to this report set out the statutory framework which underpins the United Kingdom's anti-discrimination strategy and which seeks to ensure that all individuals have the same rights and duties. The United Kingdom Government's objective is to pursue by all appropriate means a policy of eliminating racial discrimination and promoting understanding among all races. While the Government plays the primary role in ensuring that there is an adequate statutory framework it also encourages promotion, cooperation and dialogue in a variety of ways.

23. The United Kingdom Government funds and strongly endorses the work of the Commission for Racial Equality (CRE), a statutory body which seeks to promote good race relations and eliminate artificial barriers throughout the United Kingdom (see paras. 107-108). The United Kingdom Government also encourages dialogue with members of minority communities to ensure that their concerns and issues are addressed and to enable problems to be resolved. For instance, the Advisory Council on Race Relations and the Race Relations Employment Advisory Group were established to act as expert groups advising Ministers on the implications of government policies for good race relations in a variety of areas. The Home Office also employs independent race relations consultants, whose role is to provide an interface between central Government and ethnic minority communities.

24. The CRE presented its proposals for review of the Race Relations Act 1976 to the then Home Secretary in September 1992. (A copy of the review is attached at annex 5, a copy of the Government's response is at annex 6, together with a copy of a speech made by the Home Secretary on 4 July 1994 (annex 7)) setting out the United Kingdom Government's broad policies towards the elimination of discrimination and promotion of good race relations.

25. The United Kingdom Government was able to give a full response to the review after detailed and lengthy discussions with the CRE. While the United Kingdom Government was unable to accept a number of the recommendations in all their detail, it was keen to work with the CRE to meet their concerns by other means where possible. The United Kingdom Government believes this has resulted in a package of positive measures which will enhance the CRE's ability to promote good race relations in the United Kingdom, and which will raise awareness in both the private and public sectors of the importance of good equal opportunities programmes.

26. Specifically, the United Kingdom Government has been able to accept the CRE's recommendations in a number of areas. Where it does not see that a legislative solution is the most appropriate it has suggested administrative solutions. The key areas of the Government's response were:

(a) A commitment to introduce new legislation allowing the CRE to accept a legally binding undertaking as a simple way of resolving disputes without having to go through a costly and lengthy formal investigation under the Act. This will be in addition to the CRE's powers, not a replacement;

(b) The upper limit on compensation awarded by industrial tribunals in cases of racial discrimination was removed in the Race Relations (Remedies) Act 1994;

(c) The United Kingdom Government accepts that there are issues regarding the expertise and training of members of industrial tribunals in race cases. These will be looked at in the context of a current review of Industrial Tribunals;

(d) While the United Kingdom Government does not accept the CRE's arguments for the introduction of compulsory ethnic monitoring (this would impose considerable burdens, and would not recognize the progress already made by a large number of companies), it already encourages much action within the sphere of central Government activity. The Government will work with the CRE to support and encourage the enhancement of voluntary monitoring wherever possible, even though it does not consider that it should be made universal by compulsion;

(e) Even though the United Kingdom Government does not accept the CRE's call for separate offences of racial violence and social harassment, it has introduced new legislative provisions to tackle the issue of persistent harassment, and is committed to taking forward work to review the effectiveness of administrative arrangements to deal with racial crime generally. The criminal law thus already provides substantial legal protection against violence and harassment and it is important, in the view of the United Kingdom Government, not to make the work of prosecutors more difficult by introducing new burdens of proof (see paras. 43-47).

Refugees

27. Paragraph A 5 of article 2 of the General Guidelines specifically requests States to provide information on measures taken to give effect to the undertaking to encourage the means of eliminating barriers between races. In respect of refugees brought to the United Kingdom under Government-sponsored schemes, special reception/resettlement programmes are in place to assist the refugees's integration into British society. For example, Vietnamese refugees in Hong Kong, and evacuees from Bosnia and Herzegovina have been given temporary protection here at the request of the United Nations High Commissioner for Refugees. Such refugees are accommodated for an initial period in reception centres, run by voluntary organizations and funded by central Government. Grants under section 210 of the Education Reform Act 1988 support the provision of educational services to meet the particular needs of refugees and displaced persons resident in the reception centres. The Vietnamese Programme ended in March 1994; the Bosnian Programme will continue throughout 1995.

28. The Government provides funds to voluntary organizations to help refugees resettle in their new environment. This includes giving help and advice to individuals and assisting community groups to develop projects to improve the access of refugees to statutory services. Consideration is currently being given to proposals put forward jointly by two national refugee organizations on ways to improve the support for refugee communities outside London. The

Refugee Education, Training and Employment Forum continues to provide an effective platform for the exchange of information between refugee and Government department representatives.

Article 3

29. Apartheid is not practised in the United Kingdom. The United Kingdom Government openly condemns all forms of apartheid or any other form of racial segregation, and will not tolerate any of its manifestations. The United Kingdom works toward a society where all individuals, whatever their race, can feel safe, secure and able to contribute to, and benefit from, what has been achieved. The United Kingdom Government strongly believes that there should be no artificial barriers on racial grounds. It is to be noted that section 1 (2) of the Race Relations Act 1976 expressly provides that racial segregation constitutes discrimination falling within the purview of that Act. (See para. 91 on segregation in schools.)

Article 4

30. The United Kingdom maintains its interpretation of article 4 which it stated on signature of the Convention in 1966: that article 4 requires a party to the Convention to adopt further legislative measures in the fields covered by subparagraphs (a), (b), (c) of that article only if it considers - with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention (in particular the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association) - that any additional legislation or variation of existing law and practice is necessary to meet those ends.

31. The views of extremist or racist organizations are obnoxious and entirely repugnant to the United Kingdom Government. If the activities of such groups or their members breach the law, they are liable to be dealt with by the police under public order and criminal legislation, and a number of such prosecutions have been mounted in the past. Fifteen prosecutions have commenced or been completed under Part III of the Public Order Act 1986 since it came into effect in 1987.

32. There is already provision under the present criminal law in the United Kingdom which deals effectively with offences which may have a racial motivation, such as assaults. There is also legislation to address conduct which is intended or is likely to stir up racial hatred and conduct which involves the incitement of others to racial hatred. Part III of the Public Order Act 1986 sets out this legislation and a copy is at annex 8.

33. The offences created by Part III of the 1986 Act include the use of words or behaviour; the publication, distribution, display of written material; possession of written or recorded material with a view to publication, distribution, showing, playing, etc.; the public performance of a play; the distribution, showing or playing of a video or audio recording; and the broadcasting of a programme (including cable broadcast) in order to incite racial hatred. The Public Order Act 1986 also widened the scope of the offence of incitement to racial hatred so as to include conduct which is

intended, as well as conduct which is likely, to incite racial hatred. Despite the relative infrequency of prosecutions, the consensus of those consulted during the review of the Act in 1990 was that Part III had a deterrent effect. The United Kingdom Government has no power to ban individuals or organizations on the grounds that they hold extreme or racist views, nor does it have any present plans to take such powers.

34. The United Kingdom has a long tradition of freedom of speech which allows individuals to hold and express views which may well be contrary to those of the majority of the population, and which many may, and indeed do, find distasteful or even offensive. This includes material produced by a number of avowedly racist groups such as the British National Party as well as some of the literature produced by extreme minority groups such as Hizb-ut-Tahrir. Successive Governments have held the view, however, that individuals have the right to express such views so long as those views are not expressed violently or do not incite violence or hatred against others.

35. The United Kingdom Government has noted the Committee's strong view that all organizations of a racist nature should be prohibited by law. This view is expressed in paragraph 6 of the Committee's general recommendation XV of 17 March 1993 and was expressed during the examination of the United Kingdom's twelfth periodic report. The United Kingdom has considered carefully, in the light of that report, whether banning the British National Party or similar groups by law would be more effective than the present policies to prevent any incitement to racial hatred.

36. Such powers of proscription as do exist in the United Kingdom are limited to organizations involved with terrorism connected with Northern Ireland. These are justified by the exceptional and violent nature of the threat. It is the considered view of the Government that to ban extremist organizations, or to attempt to curtail their activities, on the grounds of their political principles would not be seen as in keeping with the long traditions of freedom of speech enjoyed in the United Kingdom and would, almost certainly, be counterproductive. The Government believes that such action is likely to lead to greater publicity and support for the groups in question. The Government has therefore concluded that the effects of banning groups like the British National Party would run counter to the object and purpose of the Convention. The fact that such groups are not banned does not give their members any immunity from prosecution if they commit criminal offences.

Article 5

37. All of the rights set out in article 5 are, in the United Kingdom, subject to no restrictions as to race, colour or ethnic or national origin apart from the exercise of voting rights, which, as in other countries, is subject to certain restrictions on the grounds of nationality.

Article 5 (b) - Security of person

38. CERD decision 3 (45) invited the United Kingdom to provide information on the attacks on Jewish organizations. On 26 and 27 July 1994, two car bomb attacks were carried out in London at the Israeli Embassy and Balfour House, the headquarters of a number of Jewish charitable organizations, injuring

several people. Following these attacks, the police increased protective measures at potential Jewish and Israeli targets of terrorist attack. The police continually keep under review the level of such measures, in the light of the threat. In the course of the investigation into these bombings, two people of Palestinian origin were, on 20 January 1995, charged with conspiring to cause explosions with intent to endanger life.

39. It is government policy to encourage the full and equal enjoyment of human rights and fundamental freedoms for all citizens in the United Kingdom. It is fundamental to this policy that all sections of the population should enjoy adequate protection against crime and criminal violence.

40. Members of the police service usually form the first level of response in any situation. It is vital therefore that the police service is adequately and appropriately trained. Specialist training in race relations is provided for police officers at all levels. This is described in detail in annex 9.

41. The Government remains fully committed to developing policies that address tne continuing problem of racial violence in the United Kingdom, and fully supports police efforts to tackle these crimes as a high priority. The full force of the criminal law is available to deal with offences of racial violence and harassment. Additionally, provision was recently made to strengthen Section 5 of the Public Order Act 1986 in order to deal with offences of low-level racial harassment.

42. There has been much debate over recent months about the additional value of introducing specific offences of racial violence and harassment. The United Kingdom Government has carefully considered the case for such legislation but believes that it is in the best interest of ethnic minorities to ensure that legislation is framed in such a way to ensure that those who commit such offences can be dealt with as effectively as possible. Whilst the introduction of an offence of racial violence may have a short-term declaratory effect, the United Kingdom Government believes that it would not deliver any additional practical protection or be conducive to good race relations in the long term.

43. The United Kingdom Government does not believe that it is right in principle to introduce a separate class of violent crime of racial motivation, which would attract a greater penalty than all other similar violent offences. There would also be extreme practical difficulties in proving racial motivation beyond reasonable doubt. The Government is convinced that existing arrangements whereby a court can take into account racial motivation as an aggravating feature within existing maximum penalties when sentencing is a more effective and appropriate way of ensuring that perpetrators of racial violence are properly convicted and punished.

44. Two recent cases have demonstrated how effectively this can work in practice: Regina v Craney and Corbett, and Regina v Ribbans, Duggan and Ridley. In the former, Mr. Justice Tucker, in passing severe sentences at Birmingham Crown Court, is said to have remarked that he had taken into account the racist motivation behind the attack. In the latter, the sentences were increased at the Court of Appeal and the Lord Chief Justice stated that:

> "it cannot be too strongly emphasised that where there is a racial element in an offence of violence, that is a gravely aggravating feature. There is no specific offence of racial violence, although it has been suggested that there should be one. We take the view that it is perfectly possible for the court to deal with any offence of violence which has a proven racial element in it, in a way which makes clear that that aspect invests the offence with added gravity and therefore must be regarded as an aggravating feature."

45. The United Kingdom Government does, however, continue to review the effectiveness of the law and will take account of the views of the Home Affairs Committee in their report on racial attacks and harassment published in June 1994 (see para. 58). Where it feels that there are gaps in existing arrangements it has acted. The Criminal Justice and Public Order Act 1994 makes the offence of the publication or distribution of written material intended or likely to stir up racial hatred an arrestable one. This should improve the ability of the police service to enforce the offence and identify the source of anonymous material. The Act also introduces a new offence of intentional harassment, carrying with it the power of immediate arrest, which is aimed at providing higher penalties for the most serious cases of harassment, particularly those which are persistent and racially motivated.

46. The United Kingdom Government believes that much can be done to ensure that the existing law is applied effectively and consistently in regard to crimes that are racially motivated. This applies both to the use of the Public Order Act 1986 and to the general power of courts to take racial motivation into account when sentencing. Where there is a clear understanding of the scope and purpose of the present law the United Kingdom Government believes that there are no substantial obstacles to the effective prosecution of an offender.

47. Practice varies in different areas and the United Kingdom Government is aware from work it has recently carried out that there are administrative issues, including procedures, training and guidance, which need to be addressed before it can be confident that the law is being used to the full. The United Kingdom Government has asked the Racial Attacks Group (see para. 57) to take these matters forward to ensure that there is a uniformity of commitment and practice in all criminal justice agencies in all parts of the country.

48. The police response to racially motivated incidents has for a long time been the focus of considerable public and political attention. There is still a perception amongst the ethnic minority communities in the United Kingdom that police officers often do not recognize or accept that a particular offence is racially motivated; that their response to racial incidents is inadequate in terms of investigation and prosecution; that police officers are racist; and that in some instances they victimize the victims.

49. The police service in England and Wales is made up of 43 forces. Individual force initiatives, including those aimed at combating racially motivated crime, are the responsibility of chief police officers. The

Home Office has a role in setting policy priorities for the service, and through Her Majesty's Inspectorate of Constabulary (HMIC) monitor implementation of those policies.

50. Primary inspections of forces by HMIC involve an examination of community and race relation policies and practices, including the recording and investigation of racial incidents. Statistics on the number of racially motivated incidents in each force area are published annually and HMIC considers the adequacy of individual forces' response to incidents against the background of the particular local circumstances. In the light of the information which inspections reveal, HMIC is currently considering how best to improve its inspection processes in this area.

51. Every police force in England and Wales is required to monitor the occurrence of racially motivated incidents using a standard definition agreed with the Association of Chief Police Officers (ACPO), taking account of Home Office guidance on ethnic classification. Data are supplied annually to the Home Office via HMIC. Since April 1993, as part of the national package of core performance indicators for the police, each force has been expected to publish annual data on the percentage of reported racial incidents in the force area in which further investigative action was taken. This information will be used by HMIC to monitor police performance.

52. In order to gain a deeper understanding of the nature of the problem of racial violence in this country, research efforts have been focused on establishing as detailed a picture as possible of the extent of racial attacks and harassment. Although the fact of racial harassment is now widely acknowledged, it remains very difficult to provide accurate statistics about the scale of the problem and, until very recently, it has been almost impossible to draw conclusions about trends over time. Data on racial incidents reported to the police has been available for all police forces in England and Wales since 1988, and reports of racial incidents have risen steadily since monitoring began. It is generally accepted though, that these figures do not reflect the true scale of the problem, due to under-reporting by victims. Many incidents may involve persistent low-level harassment, and despite the wide scope of the police service definition of a racial incident, few of these incidents will be reported to the police.

53. The Home Office has therefore undertaken a secondary analysis of data in the 1992 British Crime Survey (BCS) to allow a better assessment of the crime experience of non-whites. It is generally accepted that the BCS gives a better indication than police statistics both of the level of crime and of trends. Police statistics reflect not only levels of reporting but the rate at which what is reported is actually recorded. Their usefulness is therefore limited. The BCS findings have been published in a Home Office Research and Planning Unit paper "Racially motivated crime: a British Crime Survey analysis". A copy is attached at annex 10. The BCS, which is conducted for the Home Office Research and Planning Unit, collects information on respondents' experience of selected crimes and threats. It is a large national survey involving some 10,000 households. For the first time in 1988, and again in 1992, the BCS boosted the number of respondents of Afro-Caribbean and Asian (Indian, Pakistani or Bangladeshi) ethnic origin. This produced a sufficiently large sample to compare rates and patterns of criminal

victimization between these groups and the white majority. Additionally, where ethnic minority respondents had been victims of crime, they were asked whether they thought the crime had been racially motivated.

54. The police continue to focus their efforts on improving, recording and encouraging victims to report. As a result of the Racial Attacks Group's recommendations (see para. 58), many forces have implemented initiatives with the support of the local community and other local agencies to tackle racially motivated crime. HMIC monitors and disseminates initiatives and good practice throughout the service.

55. To support police efforts in this area, the Home Office continues to fund the annual Holly Royde seminar in community and race relations, which brings together senior officers from police forces nationwide with the purpose of raising awareness of police, community and race relations issues and developing action plans for implementation in forces. The Home Office also funds a Specialist Support Unit, which delivers community and race relations training to police trainers and training managers and which provides support to forces in developing community and race relations policies.

56. The police have agreed to mark the files of cases which meet the ACPO definition of racially motivated incident when they are submitted to the independent Crown Prosecution Service (CPS) for prosecution. All cases referred to the CPS by the police are reviewed in accordance with the Code for Crown Prosecutors. A revised edition of the Code was published in June 1994. There are two stages in the decision to prosecute. The first stage is the evidential test. The Crown Prosecutor must be satisfied that there is enough evidence to provide a realistic prospect of conviction. If the case does not pass this test, then it must not go ahead no matter how important or serious it may be. If the case does pass the evidential test, the Crown Prosecutor must decide if a prosecution is needed in the public interest. This test involves balancing factors for and against prosecution carefully and fairly. The Code lists as a public interest factor in favour of prosecution any offence "motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual preference". Usually a prosecution will take place in cases of any seriousness. The CPS is introducing its own scheme to monitor racially motivated incidents. This new scheme will be introduced early in 1995, together with clear guidance and training for Crown Prosecutors on the prosecution of racially motivated crime.

57. In 1993 Parliament set up an inquiry into racial attacks and harassment by a Home Affairs Select Committee, following on from previous inquiries in 1986 and 1989. Amongst the many issues under examination were the monitoring and recording of racial incidents, the police and the multi-agency response, possible causes of racial incidents, and the adequacy of the legislation relating to racial harassment. The Committee's report was published on 20 June 1994, and the United Kingdom Government responded on 20 October 1994.

58. The Government has also reconvened the interdepartmental Racial Attacks Group (RAG), two years after the publication of its second report "The Response to Racial Attacks: Sustaining the Momentum". The RAG brings together officials and practitioners from a wide range of disciplines to

consider and take forward practical recommendations aimed at improving the response to racial attacks and harassment. The importance of a coordinated approach is widely recognized because an effective response to such attacks will often involve the cooperation of a number of agencies. The RAG's remit is to review the implementation of its last report, and to address issues of concern in the light of the recommendations of the Home Affairs Committee Inquiry. The RAG has also been asked to look at ways in which a greater uniformity of approach to these issues can be encouraged. A copy of the RAG's draft work programme is at annex 11.

59. The Judicial Studies Board (JSB) is led by serving judges and is responsible for the training of all who sit in judicial office. The Ethnic Minorities Advisory Committee (EMAC) was established in 1991 by the JSB to assist in addressing racial and multi-cultural issues in courts. Its members consist of judges, barristers, magistrates and other professionals with relevant experience, especially in the field of race relations and more than half of the members are from ethnic minority communities.

60. The Committee's objectives have been defined as follows:

(a) To impart to all who sit in a judicial capacity in courts and tribunals such information about the culture, social background, perceptions, experiences, habits and religious practices of members of Britain's ethnic minority communities as is appropriate and necessary to help them perform their judicial duties with greater understanding of these matters;

(b) To assist all who act in a judicial capacity in courts and tribunals to use such information so as to avoid discriminating, or creating the perception that they are discriminating, on racial grounds against members of ethnic minorities who appear before them.

61. The prime objective of this training is to raise the awareness of all who sit in any form of judicial capacity in courts or tribunals of the need to demonstrate that the judicial system must be culturally and racially neutral, and to show them how injustice may result from culturally based errors or misconceptions or misunderstandings.

Article 5 (c) - political rights

62. The right to vote is restricted to British citizens, and those Commonwealth citizens and citizens of the Irish Republic resident in the United Kingdom, who are eligible to vote at all elections, and to citizens of the European Union, who may vote at European parliamentary elections.

63. There are currently six elected members of Parliament from ethnic minority groups. The number of ethnic minority candidates selected by the main political parties has risen in recent elections, but remains small.

64. Research shows that a greater proportion of members of ethnic minority groups choose not to exercise the right to vote at elections than their white counterparts, by not appearing on the electoral register. Research also

suggests that black Caribbean people are significantly less likely to vote than other groups. The table below sets out details of non-registration by ethnic group:

Ethnic group	Proportion not registered to vote at elections (%)
White	6
Black (Black Caribbean, Black African, Black other)	24
Indian, Pakistani, Bangladeshi	15
Other groups (including Chinese)	24
All eligible people	7.1

Source: Office of Public Census and Surveys, 1991.

65. The most likely groups of people not to register to vote are those under 30; those living in private rented accommodation; those living in inner city areas; those whose address has recently changed, or which changes frequently; and those in ethnic minority groups. To the extent that ethnic minority groups tend to have a younger age structure than that of other groups and tend to live in inner city areas, the relative extent of their non-registration will be greater. Each year the Government funds a national advertising campaign to coincide with the annual canvass. This canvass is usually targeted at those groups for whom under-registration is most marked. Post-campaign research indicates that awareness of the need to register to vote has been significantly improved among target groups as a result of these campaigns.

66. The Home Office has made available model explanatory notes on the registration system in a number of ethnic minority languages. These models are intended for adaptation by electoral registration officers according to local circumstances. The languages covered are Bengali, Chinese, Greek, Gujerati, Hindi, Punjabi, Turkish and Urdu.

Article 5 (d) (i)-(iii) - immigration and nationality (freedom of movement)

67. These paragraphs of the Convention do not specifically cover immigration policy, but this is an issue which is of concern to members of minority communities and the United Kingdom Government feels that it is right to set out in detail in this respect the action that has been taken to ensure a fair and equitable treatment to those who are affected by the United Kingdom's immigration laws. This is set out in annex 12.

Article 5 (e) (i) - employment (free choice of employment)

68. The Government continues to take steps to ensure that members of ethnic minority communities have access to employment and business opportunities on an equal footing with all in the United Kingdom. It has for some years run a number of inner cities initiatives aimed at encouraging business, improving

job prospects, tackling dereliction and making inner cities safe. Details of these initiatives were set out in the twelfth periodic report. Further details and developments are given in annex 13.

69. Overall, the age structure of the ethnic minority population is lower than that of the white population. Relatively few have reached retirement age, with some 60 per cent of each main ethnic group being of working age. While 20 per cent of the white population are aged under 16, this figure rises to 28 per cent for Indians, 29 per cent for the black (black Caribbean, black African, black other groups) ethnic group and 42 per cent amongst the Pakistani and Bangladeshi populations. (Para. 12 set out the categories currently used by the United Kingdom Government to classify ethnic groups.) These demographic characteristics should be borne in mind in any interpretation of employment statistics.

70. The Labour Force Survey (LFS) shows that economic activity rates, i.e. the proportion of people in work or seeking and available for work, differ between the various ethnic groups for a variety of reasons. The information in this report is derived from the Spring 1993 LFS. Among young men aged 16-24, 78 per cent of white men are economically active, compared with just under two thirds of blacks and about half of Asians and other groups. In all ethnic groups, nearly all of the economically inactive men in this age range are students. Among older men in ethnic minority groups, economic activity rates are close to those for white men except among Pakistani and Bangladeshi men aged 45 and over, for whom the rate is considerably lower. Among women, economic activity rates are lower in all age and ethnic groups than those of men, but the lifetime pattern differs between ethnic groups. While 70 per cent of white and black women aged 45-59 are in the labour force, only 40 per cent of Asian women in this age group are economically active. Overall, a quarter of Pakistani and Bangladeshi women of working age are in the labour force. It is thought very likely that this figure is affected by religious and other cultural influences.

71. A broad indication of the progress of ethnic minorities in employment can be obtained by comparing their proportions in the main groups of occupations. The Spring 1993 LFS shows that some 40 per cent of white men in employment work in managerial and professional occupations. About 50 per cent of Indian men are in this occupational grouping, but only 20 per cent of Pakistanis/Bangladeshis and 28 per cent of black men, with black men less likely to be managers. Craft and related occupations cover 22 per cent of black men in employment, the same percentage as white men. However only 13 per cent of Pakistani/Bangladeshi men are in this skilled category, while 23 per cent work as plant and machine operatives.

72. The low market participation rates of Muslim women preclude meaningful comparisons of the occupational levels of Pakistani or Bangladeshi women: Asian women are therefore considered as a single group. Around one third of women in employment from all ethnic groups work in managerial and professional occupations, rising to 39 per cent of women of other/mixed origins. A further quarter of working women from all ethnic groups work in clerical and secretarial occupations, although only 21 per cent of Asian women work in this occupational group. Relatively few women work in craft and related occupations or as plant and machine operators. However, 19 per cent of Asian

women work in these occupations, compared with 7 per cent of white women; 18 per cent of black women are employed in personal and protected service occupations, compared with 15 per cent for white women, and 14 per cent of Asian women work in sales occupations (compared with an average of 11 per cent).

73. People from ethnic minorities on the whole suffer disproportionate levels of unemployment and the gap between white people and ethnic minority groups tends to widen as general levels of unemployment rise. In Spring 1993 the LFS shows that national unemployment rates for men of working age were 12 per cent for the white population and 14 per cent for Indians but 31 per cent for Pakistani and Bangladeshi men and 34 per cent for black men. For women of working age the rates were white 7 per cent, Indian 11 per cent, black 20 per cent and Pakistani/Bangladeshi 29 per cent. Half of unemployed blacks and Pakistanis/Bangladeshis have been out of work for a year or more compared with 42 per cent of all unemployed people.

74. However not all ethnic minority groups are deprived: there are sections within the groups, which on average are more disadvantaged, who are faring better than many whites. At the group level, there is evidence of remarkable entrepreneurship (about 21 per cent of all Asians are self-employed compared to about 12 per cent of whites) and there have been some signs of progress from the immigrant generation to the next. Within all groups, there are often numerous examples of individual successes, including in business, the media, sport, entertainment and the arts, academia, public administration, science and medicine.

75. Increasing numbers of employers are becoming aware of the need for equal opportunities within their organization. The Equal Opportunities Ten Point Plan for Employers was developed by the Employment Department in response to a need for a package of basic and practical advice for employers on how they can offer equality of opportunity within their workplace. The plan was sent to 36,500 major employers in March 1992. Since then a further 120,000 copies have been issued. The plan covers all aspects of equal opportunities and a copy is attached at annex 14. A new booklet on Employers Equality Networks was published in May 1994. It gives guidance to employers on best practice in setting up and running voluntary equality networks. Networks provide a forum for exchanging ideas and experiences on equal opportunities. A copy of the booklet is at annex 15. The Employment Department also published, in June 1994, revised guidance for employers and trainers who are interested in taking positive action under the Race Relations Act 1976. It is aimed particularly at employers and training providers to help them plan initiatives which, within the law, will help ethnic minorities to compete for work on equal terms with others. The booklet is illustrated with examples of successful positive action programmes run by employers and a copy is at annex 16.

76. The Employment Department's Race Relations Employment Advisory Service provides advice to employers on the development and implementation of policies and practices which help to ensure equal opportunity in employment irrespective of race, colour, etc. Details of the work of the Employment Service is attached at annex 17.

77. There are other areas of employment for which the Government is directly responsible. These include the Civil Service, which has 5.2 per cent ethnic minority employees, the Armed Forces, the Police Service, with 1,814 ethnic minority officers (just under 1.5 per cent) and the Prison Service, which has 3 per cent ethnic minority officers (1,046). Details of initiatives to ensure equal opportunities in employment in the public sector are in annex 18.

Article 5 (e) (iii) - housing

78. Information on housing from the 1991 census showed a number of similarities and differences between ethnic minority groups and their experience of Britain's housing market. There was a marked similarity of tenure between households headed by someone of Indian or Pakistani ethnic origin. In both cases, there was a high proportion of owner occupation, and small proportions in Housing Authority and Local Authority rented properties. Local Authority housing was more common among black and Bangladeshi households. Location of housing and the length of time an immigrant population has been resident in Britain are important factors. In the case of the Bangladeshi population, these are one of the youngest immigrant groups and are concentrated in Inner London boroughs where the cost of housing is relatively high.

79. The Government is committed to the promotion of equality of opportunity in housing and has been involved in a number of initiatives to ensure that this comes about. The Government is not a housing provider: housing is made available by the private sector, local authorities, housing associations and voluntary organizations. However, the Government encourages these organizations to set clear guidelines for the promotion of racial equality. This is done in a number of ways, through legislation (for example, in the Housing Act 1988) and guidance to encourage equal opportunities throughout the range of housing providers which have proved successful - although further work remains to be done. The Commission for Racial Equality has published two Codes of Practice on Housing: these were mentioned in the twelfth periodic report and details of the Codes of Practice and subsequent developments are in annex 19. The Department of the Environment has also funded research into the practices of local authorities and has monitored changes in practices over the past few years.

80. The Government has been concerned about the extent of the harassment of ethnic minorities on housing estates, which is a particular problem in some inner city areas. The twelfth periodic report covered in detail the Government's response to this particular problem.

81. The Government has continued to monitor the effectiveness of the existing legislation and to issue guidance to local authorities. In 1986 research was commissioned into the policies and practice of local authorities in promoting racial equality. The findings led to the publication of a good practice guide in 1989 entitled "Tackling Racial Violence and Harassment in Local Authority Housing: A Good Practice Guide for Local Authorities". This guide was circulated to local authorities. In 1991 the Department of the Environment carried out a postal survey to monitor how far authorities had implemented guidance from this publication and from the original Racial Attacks Group's report. (The work of the Racial Attacks Group has already been fully

described in paragraph 58 and annex 11.) Some of the research results were included in the 1991 Racial Attacks Group's report. There are signs that local authorities are being more vigorous in their use of powers under Schedule 2 of the Housing Act 1985 to repossess property in cases of racial harassment. Use is also being made of civil injunctions. The Home Affairs Select Committee Inquiry into Racial Attacks and Harassment recommended that the United Kingdom Government should advise local authority housing departments to reassess their policies for dealing with racial harassment. The recently reconvened Racial Attacks Group will be looking at this.

Article 5 (e) (iv) - social services and social security (public health, medical care)

82. Government policy recognizes the need to ensure that personal social services are sensitive and responsive to the particular needs of all communities. The Department of Health continues to fund the Race Equality Unit (REU) which was referred to in the last report.

83. The Department of Health Social Services Inspectorate is committed to the promotion of race equality in all social services provision. This principle is fully integrated into all the policy and practice guidance which has been issued following the Children Act 1989 and the National Health Service and Community Care Act 1990. In 1992, the Inspectorate published a report "Black Communities - Who Cares?" which began to develop the application of this principle to all community care services. This will be consolidated in 1995 by the issuing of guidance outlining practical measures to be taken by both purchasers and providers to improve community care services for ethnic minority communities. The inspection arm of the Inspectorate is incorporating race equality principles into its basic inspection methodology and the Inspectorate as a whole is giving priority to this issue in its work programme for the period 1994-1996.

84. The Government continues to be fully committed to promoting equality of access to health services for members of ethnic minority communities.

85. The Department has set up an ethnic health unit. It works closely with the NHS Executive to facilitate the implementation of policies which have been developed by departmental Ministers to promote good practices in the NHS. The unit also works closely with purchasers, providers and local communities to identify key challenges facing the NHS in meeting the appropriate health needs of people from ethnic minority groups.

86. In December 1993, the Secretary of State for Health launched a programme of action for ethnic minority staff in the NHS. This programme aims to achieve fair representations for ethnic minority staff at all levels in the health service, and set eight goals for NHS employers to aim for.

87. The Benefits Agency (BA), which is an executive agency of the Department of Social Security, has an equal opportunities policy for its customers. In support of this a customer leaflet has been produced which sets out the following customers' rights and responsibilities: the sort of service they should expect; the type of facilities which may be available to assist them; how to complain to the BA if they feel they have been treated unfairly;

alternative independent organizations who would help a customer who felt they have been discriminated against; customer responsibilities to other customers in order to work towards an environment which provides equality of access to BA services. Further details of the services provided are given in annex 20.

Article 5 (e) (v) - education and training

88. The Government has continued to take action to improve the response of the education service to ethnic diversity, on the policy lines indicated in previous reports. Government action includes the following areas:

(a) Help for those whose mother tongue is not English;

(b) Provision to include teaching of a wide range of modern foreign languages in the curriculum;

(c) Access courses to higher education; and

(d) Action to increase the number of teachers from ethnic minorities.

Where details of these initiatives have not been covered in earlier reports they are now described in annex 21.

89. With up to 200 different mother tongues spoken by pupils in British schools, responsibility for maintaining particular languages must be primarily a matter for the communities themselves. English is therefore the normal medium of instruction in British schools (with Welsh or Gaelic as an alternative in some parts of Wales and Scotland). As indicated in the twelfth periodic report, the Government promotes the provision of bilingual assistants, as appropriate, to ease the transition to schooling of pupils with limited or no knowledge of the English language. Action has also been taken to strengthen provision of a range of modern foreign languages through the National Curriculum.

90. Schools in the United Kingdom are not racially segregated. They are subject to the provisions against racial discrimination in the Race Relations Act 1976. All maintained schools whether or not under Local Authority control, must have a published admissions policy for the school, including the criteria to be used to decide between applicants in the event that the school is oversubscribed. These arrangements are subject to the requirements of the law, including the Race Relations and Sex Discrimination Acts. In the case of self-governing (grant-maintained) schools, all admission arrangements require the approval of the Secretary of State. This provides a further check against discrimination.

91. All maintained schools must provide a daily act of collective worship for all pupils, other than those withdrawn by their parents. The timing and organization of collective worship is decided by the school. In non-denominational schools, collective worship must be "wholly or mainly of a broadly Christian character". This means that it should reflect the broad traditions of Christian belief, but must not be distinctive of any particular denomination. The law provides for schools to seek "determinations" to

allow for acts of collective worship according to a religion other than Christianity, where the requirement that worship should be of a broadly Christian character is inappropriate for some or all pupils.

92. The Department for Education is playing a full part in the work of the interdepartmental Racial Attacks Group, reconvened by the Government in 1994 (described in para. 58). The Department has circulated the two previous reports of the Racial Attacks Group, offering guidance on racial attacks and harassment, to all local education authorities. The Department for Education issued a circular on Pupil Behaviour and Discipline in 1994 which advised schools that all incidents of racial harassment must be taken seriously and a conscious effort made to state that such practices are unacceptable and will not be tolerated, for example, by making explicit reference to racist bullying in the school's behaviour policies.

93. Grant is paid by the Home Office, under section 11 of the Local Government Act 1966, to Local Authorities and certain education institutions outside Local Authority control (such as colleges of further education) to enable the employment of additional staff to help members of ethnic minorities to overcome linguistic or cultural barriers and thereby to gain full access to services and facilities.

94. Close monitoring procedures were introduced in 1993 to reinforce the revised arrangements brought in to improve the administration of the grant, by more effective targeting to ensure that the grant achieves maximum benefit for ethnic minorities.

95. Previously, for historical reasons, the drafting of the legislation restricted the grant to beneficiaries of "New Commonwealth" origin. However, by virtue of amending legislation which came into force on 20 September 1993, the grant now extends to all ethnic minorities.

96. Around 89 per cent of the available provision has been allocated to education, mainly to the provision of teachers of English as a second language. Grant is also paid in a range of other areas including social services, housing, environmental health, interpretation and translation services, library services, and employment, training and enterprise. Local Authorities have been encouraged to identify projects suitable for the placement of Local Authority staff to work in or alongside ethnic minority voluntary organizations.

97. The Government is supporting a new £6 million item in its programme of Grants for Education Support and Training (GEST) which will take effect from 1995/96. This will be targeted to the needs of bilingual pupils from ethnic minority backgrounds. In particular, it will provide mainstream subject teachers with in-service training to equip them to develop pupils' English language skills across the curriculum and to help raise standards of achievement. In addition, grants payable under section 210 of the Education Reform Act 1988 are supporting over £10 million of expenditure in the current financial year on the education of gypsies, other travellers and refugees. Following lengthy consultation with local authorities and other interested parties, grant is paid in the form of a cash-limited budget instead of as a percentage of actual salary costs.

98. Ethnic Minority Grant (EMG), which came into operation on 1 April 1992, operates in parallel to section 11, and on similar principles. EMG funds projects run by voluntary organizations to help members of ethnic minorities of any origin to gain employment, to take up vocational training, or to set up their own business. Grant is paid to voluntary organizations through local Training and Enterprise Councils.

99. Grant is normally paid at 75 per cent of salary costs of staff running projects, but where necessary grant is paid up to 100 per cent of such costs and also to meet essential non-staff costs. Expenditure in 1993/94 was £5.4 million.

100. It should be noted that, with effect from 1 April 1994, the Ethnic Minority Business Initiative, the Ethnic Minority Grant and a proportion (around 55 per cent) of funding under section 11 of the Local Government Act 1966 now form a part of the new Single Regeneration Budget. This is described in annex 13. This new government initiative brings together, into one large budget, resources currently forming 20 expenditure programmes administered by 5 different government departments. This enables funding to be used more flexibly. The budget is administered by 10 new regional offices, comprising staff from the Department of the Environment, Department of Trade and Industry, Employment Department and the Department of Transport, and with representatives from the Home Office and Department of Education, which will enable decisions to be taken in a way that is more responsive to local needs and more acceptable to local people. The Department of the Environment has responsibility for the overall administration of the Single Regeneration Budget.

Article 5 (e) (vi) - cultural activities

101. There are no restrictions on the right to equal participation in cultural opportunities on the grounds of race, colour or national or ethnic origin. Special provision is made for minority communities where possible, such as radio or television broadcasts in minority languages.

102. One of the main aims of the Broadcasting Act 1990 was to provide opportunities for communities of all kinds to have access to broadcasting stations, offering programme material designed to meet their specific tastes and interests. There was widespread recognition that many communities considered that their needs were not being addressed by the existing set of services, whether culturally, linguistically, musically or in some other way. It was also recognized that broadcasting services offer a powerful means of developing a degree of harmony and understanding through common social, community, musical and other interests. As a result, the Act provided for an expansion in the range and diversity of services, appealing to a variety of tastes and interests.

103. In the commercial television sector, the licensing body - the Independent Television Commission - can issue, on request, licences for programme channels for cable television and for some satellite channels provided that certain consumer protection requirements will be met. A number of channels have already been set up serving Turkish, Greek, Asian, Afro-Caribbean and Arabic communities.

104. In the independent radio sector, the licensing body - the Radio Authority - is not able to specify the nature of a station's programmes (which could draw attention to a radio station focusing on a particular racial or ethnic audience and foster differences). It is however required, in selecting licensees, to have regard for the extent to which any application is supported by people living locally. It must also take account of the extent to which any proposed radio station would cater for the tastes and interests of people living in the area and the extent to which it would broaden the range of programmes already available on independent local radio there. There are now 8 radio stations across the United Kingdom serving ethnic minority communities 24 hours a day.

105. The Act does not permit the Radio Authority to tell any of its licensees to include particular types of programmes in its schedule. However, the close rapport which local stations develop with their listeners encourages them to broadcast information which is in the audience's interests, relating as appropriate to such matters as health, education, civil and other rights.

Article 6

Commission for Racial Equality (CRE)

106. Information about the structure and role of the Commission for Racial Equality is contained in part 2 of the sixth periodic report. A copy of the CRE's Annual Report for 1993 is attached at annex 22. This provides further details of the CRE's legal status, role, membership and procedures as well as an indication of the range of activities and initiatives undertaken in this year.

107. The United Kingdom Government strongly supports the CRE in their dual role of combating racial discrimination and promoting good race relations, and works very closely with them. While the CRE has a clear role to take action under the Race Relations Act 1976 wherever discrimination exists, they are also keen to emphasize constructive cooperation and dialogue with both the public and private sectors. They have, over the last 12 months or so, launched a number of high profile publicity campaigns covering, for example, racial harassment, the media and racism in football. In June 1994 they launched a major public information campaign in association with the advertising company Saatchi and Saatchi.

Industrial tribunals

108. Complaints relating to discrimination in employment are dealt with by industrial tribunals. Any individual may complain to an industrial tribunal within three months of the date of alleged discrimination. Details of the numbers and levels of awards in industrial tribunal cases is attached in annex 23.

109. The United Kingdom Government supported the introduction of the Race Relations (Remedies) Act 1994, introduced by Keith Vaz MP, which came into force on 3 July 1994. This amends the Race Relations Act 1976 to remove the ceiling of £11,000 in compensation that may be awarded by industrial tribunals in cases of racial discrimination, and to allow interest to be included in

such awards. Regulations allowing industrial tribunals to award interest on compensation in race discrimination cases came into force on 1 August 1994. The changes parallel amendments made to the Sex Discrimination Act 1975 following the European Court of Justice ruling in the case of Marshall v. Southampton and South West Hampshire Health Authority.

110. The Government has reviewed the interpretative statement made in respect of article 6 and does not consider it necessary to withdraw it. In practice, as annex 23 to this report makes clear, it would be extremely unusual, to say the least, if, having upheld a complaint of racial discrimination, an industrial tribunal went on to make no financial reparation. Nevertheless, the finding of a violation of human rights is not invariably followed by a payment of financial compensation. In the well-established practice of the European Court of Human Rights a judgement finding a violation is sometimes said to constitute "sufficient just satisfaction" in itself.

Article 7

Education

111. The Government remains committed to playing its part, within the framework of the United Kingdom's devolved system of education described in earlier reports, in encouraging the education service to improve its response to cultural and ethnic diversity.

112. Section 1 (2) of the Education Reform Act 1988 requires the curriculum for every State school in England (and Wales) to be broad and balanced; to promote the spiritual, moral, cultural, mental and physical development of pupils, and of society; and to prepare pupils for the opportunities, responsibilities and experiences of adult life. The opportunity to address human rights arises in a number of contexts across the school curriculum, most obviously in the course of studying history. For example, in the new National Curriculum for history, which will be introduced from September 1995, pupils at ages 11 to 14 will be taught a unit called "The twentieth-century world". They will have to be taught about "The legacy of the Second World War for Britain and the world" and this will almost inevitably include topics such as the Charter of the United Nations and the Universal Declaration of Human Rights.

113. The National Curriculum Council (predecessor to the School Curriculum and Assessment Authority) published "Curriculum Guidance 8: Education for Citizenship" which deals with such concepts as the law, society, and respect for other individuals and groups.

114. For initial teacher training courses in England (and Wales) the Government's criteria for courses in primary school teaching require all students to have a working knowledge of teachers' pastoral, legal and contractual responsibilities and require newly qualified teachers to promote their pupils' spiritual, moral, social and cultural welfare. Criteria for secondary school courses require teachers to develop an awareness of social, psychological, developmental and cultural dimensions.

Broadcasting

115. The Broadcasting Act 1990 aims both to protect and to promote the interests of ethnic minority groups to avoid reinforcing any divisions which may exist.

116. Under the legislation, television and radio stations are precluded from including anything in their programmes which offends against good taste and decency or is likely to encourage or incite crime or lead to disorder or to be offensive to public feeling. In respect of religious programmes, the Act does not allow them to involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination. The Act also makes suitable amendments to the Public Order Act 1986 in respect of racially inflammatory material.

117. The provisions of the Broadcasting Act also require the licensing bodies - which act independently of the Government - to draw up and apply codes of practice relating to the content of programmes and of advertisirg material for television and radio broadcasts. These codes have to be observed by the broadcasters and include guidance on a range of matters. One item, for instance, in the programme codes requires radio stations and television broadcasters to be sensitive to public attitudes to what is and is not acceptable in the area of jokes based on different racial characteristics, since such jokes - whilst not necessarily constituting a criminal offence - may nevertheless be offensive.

III. ARTICLE 14 - RIGHT OF INDIVIDUAL PETITION

118. The United Kingdom has not made a declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination which would permit individuals or groups of individuals within United Kingdom jurisdiction who claim to be victims of violation by the United Kingdom of any of the rights set forth in the Convention to complain to the Committee on the Elimination of Racial Discrimination. It has noted and carefully considered the Committee's view that it should make such a declaration. It takes the view, however, that the overall effect of the various remedies (including compensation) which are available within the United Kingdom under both domestic and international law is already very considerable. It is not, therefore, persuaded of the case for further mechanisms and has no plans for changing the present position.

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UNITED NATIONS

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Thirteenth periodic report of States parties due in 1994

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND*

[2 August 1995]

Part Two

DEPENDENT TERRITORIES

Hong Kong

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* For the first part of the thirteenth periodic report submitted by the Government of the United Kingdom, see document CERD/C/263/Add.7. For the eleventh and twelfth periodic reports and the summary records of the meetings of the Committee at which those reports were considered, see:

Eleventh periodic report - CERD/C/197/Add.2 (CERD/C/SR.907-908);
Twelfth periodic report - CERD/C/226/Add.4 (CERD/C/SR.996-998).

The information submitted by the United Kingdom with respect to its dependent territories in accordance with the consolidated guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.6).

GE.95-18718 (E)

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Introduction

1. In its concluding observations on the twelfth periodic report of the United Kingdom and its dependent territories, the Committee raised a particular issue which was applicable to all the dependent territories, including Hong Kong. Since the present report in respect of Hong Kong is being submitted in advance of those in respect of the other dependent territories, it is hoped that the Committee will find it helpful if that particular issue is addressed in general terms - because it is a general issue which goes wider than Hong Kong - at this point so that the remainder of this report can be devoted to matters specifically relating to Hong Kong.

2. In paragraph 10 of its concluding observations the Committee expressed its concern that the Convention had not been incorporated in the domestic legislation of the territories and cannot be invoked in the courts. In paragraph 15 it accordingly recommended that the Convention should be incorporated into the domestic legislation of the dependent territories. The United Kingdom Government has, of course, given very careful consideration to the Committee's views on this matter and to its recommendation. But, with great respect, it is unable to agree that the express incorporation of the Convention into the domestic law of the territories either is required as a matter of legal obligation or would be the most appropriate way of ensuring the implementation of the Convention in the territories.

3. As the Committee is doubtless aware, under the Common Law system which operates in the territories, as in the United Kingdom itself, treaties which apply to the territories do not themselves have the force of internal law and cannot be directly invoked as a source of individual rights or obligations, though the courts are required to construe domestic legislation, when possible, in such a way as to avoid incompatibility with the United Kingdom's international legal obligations. In order to ensure full compliance with its treaty obligations, the practice of the United Kingdom and its dependent territories is therefore as follows. In the case of many such obligations, examination of the position established by existing law and practice reveals that it is already fully in conformity with those obligations; and in those cases no further legislation or other measures are required. But where it is ascertained that the treaty obligations do require some change (by way of addition or alteration) to existing law or practice, the usual method of effecting that change is to enact specific new legislation - which may or may not take the form of reproducing the exact terms of some or all of the provisions of the treaty in question: this is a matter of legislative technique rather than of substance - or to amend existing legislation or to adapt existing administrative practices, as the case may require. In the specific case of the International Convention on the Elimination of All Forms of Racial Discrimination, it is the considered view of the Government of the United Kingdom and the Governments of the dependent territories that the obligation which that Convention imposes can be fully and effectively discharged by the application of the usual procedures for that purpose, as just described, and that the express incorporation of the provisions of the Convention into domestic law would therefore be an unnecessary departure from the United Kingdom's established practice in these matters.

4. The foregoing does not, of course, detract in any way from the willingness of the Governments of the United Kingdom and the dependent territories, in accordance with the procedures just described, to procure the enactment of new legislation specifically for the purpose of satisfying particular requirements of the Convention in any case where it is established that the existing law is, in one respect or another, defective for that purpose.

5. As explained above, the above response to the Committee's observations and recommendation is applicable to the position in all the United Kingdom's dependent territories. The remaining paragraphs of this report concern Hong Kong only.

I. GENERAL

6. The Committee is referred, as essential background to the whole of this report but with special reference to the provisions of article 1 of the Convention, to the core document (the "country profile") for Hong Kong (and to the relevant legislation submitted therewith). That document is now supplemented by the following further information and explanatory material which may be helpful to the Committee in relation to article 1 of the Convention.

Policy on elimination of racial discrimination

7. The Government of Hong Kong subscribes to the principle of equality between persons of different race, colour, language, national or social origin. The Bill of Rights Ordinance (see the core document* and para. 10 below) ensures that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In conformity with article 2 (1) (c) of the Convention, the Government has taken steps to amend legislation to ensure compatibility with the Bill of Rights (see also paras. 18 and 19 below).

8. Hong Kong is an open, progressive and dynamic society where people of different race, colour and origin live in peace and harmony. Isolated incidents reflecting possible discriminatory attitudes have occurred, but public pressure has been effective in resolving the conflicts at an early stage.

Legal framework within which racial discrimination is prohibited and eliminated and the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social and cultural or any other field of public life are promoted and protected

9. In enacting legislation, the Governor is prohibited, by virtue of the Royal Instructions, from giving his assent to any bill whereby persons not of European birth or descent may be subjected or made liable to any disabilities

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* As of the date of publication of the present report, the core document had not yet been issued. The legislation referred to is available for consultation in the files of the secretariat.

or restrictions to which persons of European birth or descent are not also subjected or made liable, unless he has had prior permission from Her Majesty's Government to do so.

10. The Bill of Rights Ordinance, incorporating into Hong Kong law the provisions of the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong was enacted in June 1991. The Ordinance binds the Government and all public authorities. Articles 1 and 22 of the Bill of Rights prohibits discrimination based on such ground as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. While article 1 only protects the rights which are recognized in the Bill, article 22 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

11. To complement the protection afforded by the Bill of Rights, the Letters Patent, Hong Kong's principal constitutional document, have been amended so as to ensure that no law can be made in Hong Kong that restricts the rights and freedoms enjoyed in Hong Kong in a manner which is inconsistent with the ICCPR as applied to Hong Kong. The Amending Letters Patent (see the core document) came into operation at the same time as the Bill of Rights Ordinance. The equal enjoyment of rights and equal protection of the law regardless of one's race, colour or national or ethnic origin, as guaranteed in the Covenant, have thus been strengthened.

12. Since April 1989, all new principal legislation and most new subsidiary legislation have been drafted in English and Chinese. Pre-existing legislation drafted in English is also being rendered into Chinese. At the end of November 1993, about 277 Ordinances out of 528 Ordinances (together with their accompanying subsidiary legislation and new amendments) have Chinese drafts at various stages of completion. Out of these 277 Ordinances, 107 have been examined by the Bilingual Law Advisory Committee. Those Ordinances so far examined by the Committee relate mainly to subjects most likely to be of use to large sections of the public or those Ordinances most frequently used in lower courts. To date, Chinese texts of 13 Ordinances and the list of Short Titles have been declared authentic. It is expected that the whole process of rendition will be completed in 1995. The English and Chinese texts of legislation are equally authentic for legal purposes.

Ethnic characteristics of Hong Kong

13. According to the most recent estimate, the population of Hong Kong at the end of 1993 was 6,019,900.

14. There is no up-to-date information on the racial characteristics of the population of Hong Kong. Information on place of birth, which is not the same as race, was elicited in the 1991 Population Census. According to the 1991 Population Census, 5,522,300 residents were enumerated, of whom 3,299,600 (59.8 per cent) were born in Hong Kong, 1,967,500 (35.6 per cent) in China, including Macau and Taiwan, and the remaining 255,200 (4.6 per cent) in various other countries. Details are shown below.

1991 Hong Kong Population Census

Number of enumerated residents, by place of birth

	Number	Per cent
Hong Kong	3 299 600	59.8
China (including Macau and Taiwan)	1 967 500	35.6
Philippines	66 100	1.2
Indonesia	40 700	0.7
United Kingdom	23 700	0.4
India, Pakistan, Bangladesh and Sri Lanka	14 300	0.3
Thailand	14 100	0.3
Malaysia	12 800	0.2
Japan	11 200	0.2
United States of America	11 200	0.2
Viet Nam	10 300	0.2
Elsewhere	50 800	0.9
Total	5 522 300	100.0

15. The 1991 Population Census also asked about the usual language/dialect of each resident. This referred to the language/dialect that the resident would use to speak to other family members. Although usual language may differ from mother tongue, figures in the table below give additional information on the ethnic mix of the population:

Proportion of population aged 5* and over, by usual language/dialect, 1991

Usual language/dialect	Per cent
Cantonese	88.7
Putonghua	1.1
Other Chinese dialects	7.0
English	2.2
Japanese	0.2
Filipino	0.1
Indonesian	0.1
Hindi	0.1
Others	0.5

* Excluding dumb persons.

II. ARTICLES 2 TO 7

Article 2

16. Article 22 of the Bill of Rights effectively prohibits public authorities in Hong Kong from engaging in any practice that discriminates on the basis of race.

17. Under the Commissioner for Administrative Complaints Ordinance (see the core document), the Commissioner for Administrative Complaints is empowered to investigate complaints against maladministration of government departments and major statutory organizations. Maladministration includes any action which is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory.

18. Since the enactment of the Bill of Rights Ordinance, the Hong Kong Government has conducted a review of legislation to ensure that existing laws are compatible with the Bill of Rights. So far 14 amending bills have been enacted to amend 26 existing pieces of legislation for compatibility with the Bill of Rights; more amendments are in the pipeline. The review of legislation is an ongoing exercise and will take into account developments in local human rights jurisprudence.

19. One recent amendment removed a provision for differential treatment on the ground of race that was considered to be inconsistent with article 22 of the Bill of Rights. The provision in question was contained in the Brewin Trust Fund Ordinance and restricted eligibility to apply for grants from the trust fund governed by the Ordinance to persons of Chinese race. While there may have been sound social reasons for this preferential treatment when the Ordinance was enacted, it is not considered justified under current circumstances.

20. There are currently no antidiscrimination laws in Hong Kong apart from the Bill of Rights Ordinance which binds only the Government and public authorities. The Hong Kong Government is taking action to introduce specific legislation to prohibit discrimination on the grounds of sex and disability, in both the private and the public sector. As antidiscrimination legislation is a relatively new area of law, of which Hong Kong has little experience, the approach adopted by the Hong Kong Government has been to start first with a more confined scope, concentrating on areas where there is a clear need and public demand for action. This will permit the effect of such legislation to be tested in a focused manner, allow time for the community to adjust and adapt to the new norms set by the legislation and enable the Government to deal with any problems that may arise as a result of the legislation. This is in line with the Hong Kong Government's well-tested and effective step-by-step approach to new forms of legislation such as this. After there has been sufficient experience with the legislation dealing with discrimination on grounds of sex and disability, consideration will be given to the need for comparable legislation in other areas, including racial discrimination.

21. Schools and colleges have continued to give instruction to bring about greater appreciation of the achievements of different cultures. More emphasis has also been placed on civic education to foster a greater degree of understanding, interaction and interdependence within the community.

Cultural, recreational and sporting activities

22. No distinction is made by the Hong Kong Government on racial, ethnic or religious grounds in providing cultural recreational and sporting facilities and financial support. Regardless of race, Hong Kong people have equal opportunities to participate in all cultural, sporting and recreational activities. It is the policy of the Hong Kong Government to promote the development and appreciation of, and participation in, the arts with a view to improving the quality of life of the whole community. It is also the policy of the Hong Kong Government to promote sports, both in terms of excellence and at the grass-roots level, for the community as a whole. Major sports, open championships, international events and territory-wide, regional and district events are open to all.

Treatment of special groups

23. Foreign workers. There are different categories of foreign workers in Hong Kong. Among them are professionals and others with technical expertise or administrative and managerial skills from outside Hong Kong. In addition, there are foreign domestic helpers and skilled workers who entered Hong Kong for employment. Except to the extent that particular laws may distinguish, for particular purposes, between citizens and non-citizens, all these foreign workers are treated equally before the law with other persons in Hong Kong and enjoy the same rights and freedoms, and there is no discrimination against them on the grounds of their race, colour, descent or national or ethnic origin.

24. The Labour Department provides conciliation services to all workers, including foreign workers of different categories, when there is a dispute on conditions of employment between them and their employers. It also assists the workers to pursue their claims through the appropriate legal channels if both parties fail to reach a settlement. Foreign workers who have any queries related to their statutory rights under relevant labour legislation are given free access to briefing and counselling services provided by the Labour Department.

25. The number of foreign domestic helpers in Hong Kong now exceeds 100,000. Most of them come from the Philippines. They constitute such a fast-growing community that the Hong Kong Government has found it necessary to examine the extent to which their need for recreational outlets has been met by the existing level of facilities. The preliminary plan is to identify desirable venues to develop facilities that would meet the special needs of this group of population.

26. Vietnamese refugees. Vietnamese refugees in Hong Kong who are awaiting resettlement overseas are accommodated in an open centre which is funded and managed through the office of the United Nations High Commissioner for Refugees. Apart from a requirement that they must reside in the centre,

they enjoy the same rights and freedoms as other persons in Hong Kong and are treated equally before the law, and there is no discrimination against them on the grounds of their race, colour, descent or national or ethnic origin.

27. Vietnamese migrants. Vietnamese migrants who have been screened out as non-refugees in accordance with the 1951 Convention and the 1967 Protocol relating to the Status of Refugees are returned to Viet Nam as illegal immigrants and are in the meantime detained in detention centres. The status determination criteria for the screening process are those recommended by the United Nations High Commissioner for Refugees (UNHCR) and the procedures were devised in consultation with UNHCR and contain checks and balances to ensure that they are administered as fairly as possible. The treatment of the Vietnamese migrants under detention is subject to the detention centres rules which have been reviewed and, where necessary, revised having regard to the provisions of the Bill of Rights Ordinance. In addition, Vietnamese migrants have access to lawyers, non-governmental organization workers and UNHCR field officers, and they are also allowed to be visited from time to time by friends and relatives. There are regular visits to detention centres by justices of the peace, members of Parliament, legislative councillors District Board members and journalists. The presence of UNHCR officers in Hong Kong's camps also ensures that any mistreatment of the Vietnamese migrants will be immediately brought to the attention of the proper authorities. Subject to the restrictions inherent in their status as detained persons awaiting return as illegal immigrants, Vietnamese migrants enjoy the same rights and freedoms as other persons in Hong Kong and are treated equally before the law, and there is no discrimination against them on the grounds of their race, colour, descent or national or ethnic origin.

Article 3

28. Neither apartheid nor any other form of racial segregation is practised in Hong Kong, nor would it be tolerated by the Government or people of Hong Kong. So far as concerns apartheid as formerly practised in South Africa, it is to be noted that Hong Kong, as a dependent territory of the United Kingdom, applied and enforced the applicable United Nations sanctions until, following the first all-race multiparty elections and the establishment of a democratic and non-racial Government in South Africa, the United Nations revoked all its remaining measures against South Africa in May 1994. Hong Kong then also lifted all of its previous sanctions against South Africa.

Article 4

29. As stated in paragraph 20 above, it is the intention of the Hong Kong Government, after there has been sufficient experience with the operation of the projected legislation against discrimination on grounds of sex and disability, to give consideration to the need for comparable legislation against racial discrimination.

30. With regard to the particular provisions of paragraphs (a) and (b) of article 4, the United Kingdom Government's interpretation of the effect of these two provisions, which is set out in paragraph 30 of its thirteenth periodic report under the Convention in respect of the United Kingdom itself

(i.e. the metropolitan territory), is of course equally applicable to their effect in respect of Hong Kong. For reasons similar, mutatis mutandis, to those explained in paragraphs 31-36 of that report, but having regard especially to the fact that activities and organizations of the kind at which paragraphs (a) and (b) of article 4 are directed are at present virtually unknown in Hong Kong, the Hong Kong Government does not consider that it is necessary or desirable to introduce additional legislation specifically to make all such activities and organizations illegal. It must be made clear, however, that the existing law of Hong Kong already contains adequate provision which would enable any racially motivated acts of violence (or the incitement to such acts) and any activities, whether of individuals or organizations, aimed at inciting racial hatred, to be effectively punished or suppressed. Thus, the general criminal law of Hong Kong proscribes acts of violence of various kinds, as well, of course, as the incitement of others to commit such acts. So far as organizations are concerned, under section 8 of the Societies Ordinance an order may be made prohibiting the operation of a society where it is considered that its operation may be prejudicial to the security of Hong Kong or to public safety or public order (ordre public).

31. With regard to paragraph (c) of article 4 of the Convention, article 22 of the Bill of Rights effectively prohibits public authorities in Hong Kong from engaging in any practice that involves racial discrimination within the meaning of the Convention. Attention is also drawn to paragraphs 57 and 58 below which describe the measures in force to prevent television and radio broadcasts containing material which is likely to incite racial hatred or is racially denigrating.

Article 5

32. None of the rights specified in article 5 is subject, in Hong Kong, to any restriction based on race, colour or national or ethnic origin.

33. In Hong Kong, all persons, regardless of their race, colour or national or ethnic origin, are equal before the law and have equal access to the courts. This always was the position and is now expressly provided for by, among other provisions, articles 1, 10 and 22 of the Bill of Rights. Legal aid is available to all persons if they satisfy the Director of Legal Aid on financial eligibility and justification for legal action. In addition, article 11 provides that any person charged with a criminal offence is entitled, in full equality, to legal aid where the interests of justice so require and without payment if he himself cannot pay for it. Both English and Chinese, being the official languages, are used in the lower courts. Although proceedings in the higher courts are conducted in English, ample interpretation facilities are provided for non-English speakers. Legislation has recently been introduced to enable the judiciary to give effect to an eight-phase implementation strategy which is aimed at putting into place, before 1 July 1997, a framework for the use of Chinese, along with English, in all judicial proceedings in Hong Kong. It is the Government's stated objective that more judicial posts be filled by local candidates.

34. The right to security of person is principally secured through the Offences against the Person Ordinance which makes it an offence in law to

assault or wound anyone. There is no distinction as to race, colour or national or ethnic origin. The penalty for committing such an offence varies depending on the gravity of the assault.

35. The Crimes (Torture) Ordinance provides that torture is an offence under the law of Hong Kong. Section 3 creates the offence of torture, defining it as the intentional infliction of severe physical or mental suffering by a public official, a person acting in an official capacity or another person at his instigation or with his acquiescence. A person convicted of torture is liable to life imprisonment.

36. Elections to the Municipal Councils and the District Boards are based on geographical constituencies. Elections to the Legislative Council are based on geographical as well as functional constituencies. As from September 1995, there will be an additional Election Committee constituency to elect Legislative Council members. The laws governing such elections to the Legislative Council, the Municipal Councils and the District Boards make no reference to race, colour or national or ethnic origin.

37. For the geographical constituency elections, the electoral franchise is based on residence, irrespective of race, colour or national or ethnic origin. Essentially everyone who is 18 years of age or over and who is a Hong Kong permanent resident is eligible to apply for registration as an elector in the constituency in which he lives. Where a person is a non-permanent resident, he is additionally required to have ordinarily resided in Hong Kong for the seven years immediately before his application. The electorate for functional constituency elections comprises, at present, either individual or corporate electors or a mixture of both. As from September 1995, the franchise will be significantly broadened. All corporate voting will be abolished and replaced by individual voting. The electorate for the Election Committee constituency will comprise all elected District Board members. The franchise for both the functional and Election Committee constituencies do not make any reference to race, colour or national or ethnic origin.

38. As for the qualifications for candidature in geographical constituency and the Election Committee constituency elections, every person who is a registered elector and has ordinarily resided in Hong Kong for the immediate preceding 10 years is eligible to be nominated. As for candidates for functional constituency elections, they must be registered geographical electors. In addition, they must either be registered electors of or have substantial connection with the relevant functional constituencies. There is no reference to race, colour or national or ethnic origin.

39. All Hong Kong residents, unless under lawful arrest or detention, enjoy the right to freedom of movement. They are free to travel and take up residence anywhere within the territory, irrespective of their race, colour or national or ethnic origin.

40. All Hong Kong residents are free to leave the territory unless under lawful arrest or detention or injunction of a court. Permanent residents of Hong Kong have the absolute right to return to Hong Kong. This right is provided for by law. It is not dependent on race, colour or national or ethnic origin.

41. Hong Kong is not a sovereign State and therefore does not have nationality laws of its own. Under the relevant United Kingdom legislation (the British Nationality Act 1981), the status of British Dependent Territories citizen (BDTC) can be acquired, by virtue of a connection with Hong Kong, through various means, e.g. by birth, by adoption or by naturalization. The possession of a particular race, colour or national or ethnic origin is neither a requirement for, nor an impediment to, the acquisition of that status. There is also a quasi-nationality status of permanent resident of Hong Kong, which is automatic for all persons who are BDTCs by virtue of their connection with Hong Kong. Again, there is no discrimination against any person on grounds of race, etc. In addition, the status of permanent resident can be acquired by persons of Chinese race who have resided in Hong Kong continuously for seven years. This additional right for ethnic Chinese takes account of Hong Kong's historical background and close relationship with China. (Chinese immigrants make up the largest group entering Hong Kong for permanent settlement every year.) The major difference between a permanent and a non-permanent resident is that the former has the right to land unconditionally and not to be deported. Practically speaking, permanent resident status is not relevant to the enjoyment of welfare, educational, medical and other social facilities. Moreover, a non-ethnic Chinese may acquire permanent resident status by becoming naturalized as a BDTC.

42. In paragraph 10 of its concluding observations on the twelfth periodic report of the United Kingdom and its dependent territories, the Committee expressed its concern at what it regarded as the discriminatory provisions of the British Nationality (Hong Kong) Act 1990. This concern appears to be based on a misconception of the purpose and effect of that Act. Its main purpose is to facilitate the acquisition of British citizenship by key Hong Kong workers (and their families) who would otherwise not be in a position to claim it and thereby give them confidence to remain in Hong Kong up to and beyond 1997, when sovereignty over the territory will be transferred to the People's Republic of China. The Act provides for up to 50,000 heads of household to be granted citizenship. These are selected on the basis of their actual and potential contributions to the smooth running, stability and prosperity of Hong Kong. It is expressly provided by section 2 (3) of the Act that section 44 (1) of the British Nationality Act 1981 shall have effect as if included in it. Section 44 (1) provides that any discretion vested in the Secretary of State or a Governor shall be exercised without regard to the race, colour or origin of any person who may be affected by its exercise. Successful applications under the 1990 Act come from a wide range of backgrounds, income levels and occupations. The grant of citizenship is being confined to 50,000 principal beneficiaries because of the need to strike a balance between maintaining confidence in Hong Kong and limiting potential immigration into the United Kingdom.

43. Every Hong Kong resident has an absolute right, without distinction as to race, colour or national or ethnic origin, to marry and to choose his or her spouse. Marriage between two persons of different ethnic origins is common and well accepted in Hong Kong.

44. The rights mentioned in article 5 (d) (v) and (vi) (the right to own property and the right to inherit) are secured in Hong Kong by a combination of statutory and common law. Article 22 of the Bill of Rights ensures that all relevant laws are applied in a non-discriminatory fashion.

45. The rights mentioned in article 5 (d) (vii) (freedom of thought, etc.), (viii) (freedom of opinion and expression) and (ix) (freedom of assembly and association) are specifically secured by articles 15, 16, 17 and 18 of the Bill of Rights. Article 1 of the Bill of Rights provides that they shall be enjoyed without distinction of any kind, such as race, colour or national or social origin.

46. In Hong Kong, everyone, without distinction as to race, colour or national or ethnic origin, has the right to work. There is freedom of choice of employment for all persons (save that the employment of women and young persons, again without distinction as to race, etc., is prohibited in certain trades or work processes which are likely to jeopardize their safety, health and welfare). As regards the rights to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration, they are enjoyed by all workers regardless of race, colour or national or ethnic origin.

47. There is also no racial discrimination in any form in respect of employment benefits, welfare and protection. These benefits are available, without any such discrimination, to all workers of foreign origin in Hong Kong, including foreign domestic helpers and indeed to all employees. Workers from outside Hong Kong, regardless of their countries of origin, are given equal treatment in the employment sphere with the general population in Hong Kong. Persons from overseas (whatever their race) will not be admitted to Hong Kong for employment unless their prospective employers are prepared to offer them employment terms no less favourable than those which are offered to local workers, and the labour legislation relating to employment benefits and protection applies in the same way to foreign workers, irrespective of their race, colour or national or ethnic origin, as to local workers.

48. There is also no distinction as to race, etc., regarding the right to form and join trade unions. This right is secured by article 18 of the Bill of Rights and, again, article 1 of the Bill of Rights requires that it is to be enjoyed without distinction of any kind, such as race, colour or national or social origin.

49. The recruitment policy of the Hong Kong Government has been for many years to appoint suitable and qualified local candidates to positions in the public service, but no discrimination is made on the basis of race. The recruitment of overseas candidates is undertaken only when local candidates are not available or are available in insufficient numbers. To cater for the different needs of overseas candidates, a different set of terms and conditions of service has been offered to these candidates. However, under present day circumstances, the differences in terms and conditions of service have become less necessary. The Government has therefore proposed one set of common terms of appointment and conditions of service for general application in future.

50. There are 189,927 officers in the public service as at 1 April 1994, comprising 187,901 (98.9 per cent) officers on local terms and conditions of service and 2,026 (1.1 per cent) officers on overseas terms and conditions.

51. The right to be allocated public housing is based on an applicant's housing need, and is enjoyed without distinction as to race, colour or national or ethnic origin. There is special provision to address the housing needs of indigenous villagers and their families in rural areas in the New Territories of Hong Kong. A male indigenous villager is entitled to apply for permission to erect for himself and his family, during his lifetime, a small house on his own agricultural land within his own village. Alternatively he may apply for the grant, at a concessionary premium, of a site on government land for the same purpose (in which case, if he later sells the house, he must pay the balance of the full market premium). The restriction of this facility to indigenous villagers reflects the traditions and customs of the indigenous communities where heads of households were traditionally male and women moved away from their villages upon marriage.

52. The right to receive medical care, social security and social services is enjoyed without distinction as to race, colour or national or ethnic origin.

53. There is no discrimination on grounds of race, colour or national or ethnic origin in the enjoyment of the right to education and training.

54. There is no racial discrimination in any form with respect to the right to participate in cultural activities.

55. The effect of article 22 of the Bill of Rights is that all laws which regulate the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafés, theatres and parks, must not be discriminatory either in their terms or in their practical application.

Article 6

56. Any act of racial discrimination by the Government or any public authority of Hong Kong (or by any person acting on behalf of that Government or any such authority) would constitute a breach of the Bill of Rights Ordinance. Section 6 of that Ordinance provides that a court or tribunal, whether in proceedings within its jurisdiction for a breach of the Ordinance or in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant, may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances. In most cases the remedy or relief granted by the court or tribunal could be expected to include an award of financial compensation. However, there would not necessarily be such an award in every case. In this connection, the Committee's attention is drawn to paragraph 110 of the United Kingdom Government's thirteenth periodic report under the Convention in respect of its metropolitan territory. What is said there is, of course, equally applicable to the operation of article 6 of the Convention in respect of Hong Kong.

Article 7

57. Since the twelfth periodic report in respect of Hong Kong under the Convention a new statutory provision has been introduced to prohibit local television licensees from broadcasting any programme, advertisement, announcement or other material that is likely to incite hatred against any group of persons, defined by reference to colour, race, sex, religion, nationality or ethnic or national origin.

58. Codes of Practice on Programme Standards for television and radio broadcasts in Hong Kong also contain provisions to forbid the broadcast of any programme which is likely to encourage hatred against or fear of, and/or considered to be denigrating or insulting to, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, age, social status or physical or mental disability.

59. In Hong Kong, teachers are encouraged to promote respect and appreciation for the achievements of other cultures. Human rights and the elimination of discrimination are taught through the formal curriculum on social studies, economics, public affairs and geography, as well as through extracurricular activities. In the 1993/94 school year the Hong Kong Government organized talks and workshops on human rights for teacher trainees.

60. In Hong Kong, students are taught to understand the basic concepts of human rights and the culture, characteristics and achievements of different racial communities. Efforts have also been made through the school curriculum and civic education programmes to foster positive attitudes of awareness and acceptance of human rights among students.

61. In May 1992, a Human Rights Education Sub-Committee was set up under Hong Kong's Committee on the Promotion of Civic Education to promote human rights education among the general public. Since then it has been involved in a number of successful projects and activities. These include community participation schemes on human rights projects; production and distribution of picture books to arouse interest in human rights; production and dissemination of human rights messages on a free telephone "information line"; radio and television programmes on human rights; production of teaching kits for secondary schools; large-scale exhibitions; and seminars and topical discussion sessions. Over the next three years, an extra $20 million will be granted to the Committee on the Promotion of Civic Education to expand its educational programmes on equal opportunities and human rights. The Committee will also establish a full-time educational unit to develop human rights education materials and programmes.

62. The Hong Kong Government has in the past produced and made available to the public various human rights documents and introductory booklets in both English and Chinese. These include the text of the International Convention on the Elimination of All Forms of Racial Discrimination and the twelfth periodic report in respect of Hong Kong under the Convention. The text of the present report will be tabled in the Legislative Council and distributed to the public and the media following its submission to the United Nations for consideration by the Committee.